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collated on 8/4/97

A10, B-18, K5

Wing C H 613

MAXWELL I p. 575, no. 7



C 4613



# TOPICKS In the Laws of ENGLAND.

Containing *Media*, apt for  
Argument, and resolution of *Law*  
Cases: also an Exposition of  
severall words, not touched  
by former *Glossaries*.

---

Non omne Argumentum uniuscunque venit  
ideoque non passim quærendum est, mul-  
tus alioquin error est exhaustoque labore  
quod non ratione scrutabimus non poteri-  
mus invenire nisi casu. Quintil.

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---

L O N D O N.

Printed by R. L. for William Leake, and are to  
be sold at his Shop at the signe of the Crown  
in Fleetstreet, betweene the two  
Temple Gates. 1647.

# TOPICS

## Uncle Tom's

## EMGEMAND

totius artis genitio

and to neighbors among A

## Geological notes on the tail

### Instruction, 25-27 avil



M. O. D. M. O. E.

1878. 1. T



To the HONORABLE  
OLIVER Saint JOHN  
Esquire Solicitor  
Generall,  
AND  
OLIVER CRUMWEL  
Esquire, the Honourable, Pra-  
dent, and Valiant Lieute-  
nant General.

Honorable,

**A**nd, I may be matter of mar-  
vell, that any thing of  
Law should new be heard  
but to whisper amidst the  
noyse of lowd Instruments of Warre;  
this may Apologize, that both sides  
professe the mayntenance of Laws. If

again it seeme strange to any that I  
joyne for Patrons of a Lawbooke a  
Sword-man, and one of the long Robe  
together: let this suffice, that the  
last is well known to have bin longer  
time a Meccenas of Schollers, then  
a Commander of Souldiers and men  
are also well perswaded that the points  
of these swords are bent onely against  
the adversaries of those Laws which  
are written upon their hilts. These  
Laws are now in danger, and the  
Common-wealth with them who can  
sit still and do nothing like old Cre-  
on, when his house was on fire em-  
bracing his only daughter, but helped  
nothing till himselfe and shee were  
consumed in the flame. With my e-  
state I cannot helpe, that was long  
since taken from mee by the injustice  
& oppression of the Popish Northern  
Army and our own malignant Coun-  
trymen who called in that Army, and  
assisted them. With my body I can do  
little being somewhat in yeers and  
more

more unsifted by a sedentary life, besides uncalled upon for such services. I both approve and somewhat resemble the Spaniards posture, who when he is bleeding his last, and so weake hee cannot stand to fight, yet while any life is in him hee will be brodding at, and pottering upon the ground, every way with his Rapier or Dagger point as if hee would doe somthing, wound his enemie, &c. if he were able. These weake essayes shew a minde to doe good to the publike; In them little new Law can be found, they rather shew how to use the old, the Logick of the Laws which is to be instrumentall to all other Sciences, and called by the Philosopher Organon Organon. If these observations shall have any use that way or any else, I have my ends: Your Honourable fauours to me who are so much one for the publike hath been reason enough to me to joyne you in this Dedication, Eadem sentitis, eadem agitis, in foro

&

& in campo. The Romans called  
some of their Worthies Gladii Ro-  
manorum, so Marcellus, other Cli-  
pei, so Fabius Maximus, both goe  
together, both usefull now. I shall  
not need much to implore your pro-  
tection wha cherish every sparke ap-  
pears for the publike. The Lord make  
you ride on with good luck for the re-  
joynting again his Majesty, and the  
great Councel of England, the Head  
and the Members, and that the Laws,  
one part (whereof is priviledge of Par-  
liament) may be maintained and du-  
ly executed, for as Bracton saith,  
Parum est jus in Civitate esse, nisi  
sint qui possint jura gerere, which if  
I mistake not, is a main ground of this  
bloudie Quarrell, which God end in  
due time, and in the accomplishment of  
Peace and Truth, which shall be the  
continued prayer of

From my  
chamber in the  
Inner Temple.

Your humble Servant,

J. C.



## To THE READER.

**M**AN by his defection from his Maker, lost Truth as well as good, and is fain to gather up the one as well as the other by peecemeale, as a Bee that goes from flower to flower to get up any reasonable quantity of honey: How many *minutula frustula* are there found and left from one Age to another by such as have been wittie and industrious in each Science, and altogether will not make up halfe that the first man had in the bulke *uno intuitu*, as it were. The Philosophers have left some Principles, Axioms, and Topikes,

the Humanists, Physitians, and  
Moralists *Aphorismes*: Musitians  
their *Systemata*, for to that Science  
I take that word properly to be-  
long, though usurped by the later  
Logicians. The Lawyers their  
*Maximes*, *Brocardica*, *Grounds*, and  
*Placita*: Others their *Paradigma-  
ta*, *Loca Media*, fit for invention and  
argumentation, some of these by  
experience are demonstrative, and  
more immediately, certainly, and  
resolvedly bring *Scientiam*, o-  
thers are of a lower ranke, and are  
called *Dialectica*, or *Probabilia*,  
which helpe to resolve questions  
and cases with a more trembling  
judgement, and some fears, as they  
say, least the truth may be other-  
wise, and is termed opinion, as that  
other knowledge; of this kinde are  
these few Observations of mine,  
and I call them **T O P I C K S**, in  
which one may finde matter of ar-  
gument for cases shall be propoun-  
ded

ded, and raise Majors in which the  
chiefe vigour of argument lies: I  
dare not call them grounds of Law,  
as hee did who once made an essay  
in this kinde, yet I finde a great  
*Rabbin* in our Law cals them *Rules* Institutes <sup>152.</sup>  
of Law. I have put them down in  
the most familiar way of our Books  
expression, which is in various lan-  
guages, which will prove most use-  
full, the Law of *England* intending  
matter, not words, and it brings  
what we have read in our books  
quickest to our apprehensions,  
whereas the turning of those terms  
into fine Latine, or civill Law ex-  
pressions, as some of late makes un-  
couth to the English Lawyer, and  
far lesse usefull: There be 400 ti-  
tles and terms of Law in our books,  
and yet if you have present use of a-  
ny of these Topicks, you cannot  
finde them there, in this you may,  
which will serve not onely to grace  
argument, but resolve some doubts,

I haue made each place good by  
Book Cases , and some few Re-  
ports, you may add more in your  
daily reading without such obser-  
vations, the Student will be put far  
to seeke for such Rules and Cases  
upon a fuddain , I have put them  
in an alphabeticall order , the more  
easie to finde them and make use of  
them, other method to dream of in  
Law learning as some have done  
is vaine , sithence it consists of infi-  
nite particulars, of which the Logi-  
cian determines thus. *Individualia  
non recipiuntur in methodum propter  
infinitatem.* Vale.

J. C.

Contenta.

Act of God shall prejudice no man, 1  
Act of a Court shall prejudice no man & contra,  
Act the first who shall do where it is doubtfull, 3  
Act implicit where not sufficient but shall be explicit. 5  
Act of an Enemy shall turn to my benefit, ibid.  
Act subsequent shall be guided by agreement precedent, ibid.  
Act imperfect of the part of one party shall be of both parties, 6  
Act executed where it shall be defeasible and contrary, ibid.  
One Act may inure to two interests, ibid.  
Actori incumbit onus, 7  
An Act to himself, where a man may do and contrary, ibid.  
where part of an Act cannot be performed, yet the rest shall, 9  
One shall not have benefit of his own Act, prejudice he may, 9  
One shall be punished for the Act of another, 10  
One shall not defeat his own Act, & è contra, 11  
gens & consentie's pari pena plectuntur, ibid.  
posse ad esse non est bona argumentatio, sic à non esse ad non posse, ibid.  
posse ad esse bona sit argumentatio, 12  
non posse ad non esse bona sit argumentatio, ib.  
It me invito made is not my act, 13  
argumentum à minori ad maius tenet affirmative, ibid.

Caixaenta.

Bonum publicum privato preferendum, 34

Causa qualis tale causatum, ibid.

Causatum non excedit suam causam, 15

Causans damnum equalis facienti, ibid.

Coniunctive, and collective, words taken severally  
and discretive, 16

Causa cessante cessat effectus. 17

Coliquintidae parum ictum ius vitiat, 18

A coniunctis ad devisa male arguitur, 20

Coniunctorum utrumque oportet esse verum, ibid.

Damnum absque iniuria, not punishable. ibid.

Deus & natura ferenda, 21

Dictum partis, is not exclusive taciti dicti legit, ib.

Disfunctorum sufficit alterum esse verum, ibid.

Distructio facti, shall be eodem modo quo creatione

Dictum partis, which is no more then dictum legit  
operates nothing at all. 23

Dominus & servus, Judge and Minister, Subject

and Sovereigne, Idem non erit, so Judge and  
party, 24

Diener dat nomen rei, & regulabit eam, 25

Duty once discharged is always discharged, 26

De non existentibus & aliter existentibus, quam  
lex vult eadem ratio, ibid.

Equipollentia habent eundem in lege vigorem, ib.

Eadem ratio, idem ius. 27

Expressum & particulare facit cessare tacitum &  
generale, ibid.

Exceptio firmat regulam, concessionem, &c. 29

Etymologia verborum non praebet firmum argu-  
mentum, 30

Igitus etia probat, 31

Expositio verborum, ibid.

# Contenta.

etually done as

veria	In rerum natura	69
ut	Ipsa facto	non
, ab, abs	Iuxta	ad.
Abathia	Infra	
Intebac	Maeremium	
ompetent	Meniall	
onsueta	Nuper	
irciter	Pacatione	
itra	Prætextu	
Infra Circa	Prima, Proxima	
iscretion	Pacifice	
ionque, then, tunc	Pro	
enise	Forfeiture	
it	Puer	
Expiration	Nos, vos	
Esteant, being	Permittere	
Exactionibus	Res	
Et, suit	Sufficienter	
Eviction	Sure, estate	
House	Similiter	
Horrible, enormous	Prædict.	
Incontinenter & im-	Paratus	
mediate	Et cætera	
Infra & Maria	Comodities	
Inhabitant	Souvereigne	
Resiant, commorant	Subditus	
In, apud, ad, de	Miniments	
Interest	Expositio verborum	
In manibus	in wills.	
Inde		
Fixio iuris neminem ledere debet,		49
Fortior est obligatio partis quam legis,		50
Fortior est dispositio legis quam hominis,	ibid.	
Fortior & melior est provisio legis quā hominis,	51	
Fundamento distracto cadit opus,	ibid.	52

caſe auſt le nihil certum ponit,	53
caſe Generall words where they will help particular inſ	ibid
ſfirmities,	ibid
Generall words in grants where they ſhall be reſtrained by particular words in the ſame clause and contrary,	53
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Integra lex ſeparat & in diuidua,	ibid
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Ignorantia non excusat,	58
Inter aequales melior est conditio poſſidentis, ibid.	ibid
Iteration of a ſmall offence will make it amount to a great one,	59
Iniuria propria non cadit in beneficium facientium,	ibid
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Lex iudicat de imposſibiliter faciendis quaſi fractis	65
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The Law iudgeth of that may be done as actually done,	ibid

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The Law iudgeth of some things actually done as not done &c & converso. 69

The Law adiudgeth the same thing in esse, & non esse to divers purposes. ibid.

Quod lex dicit factum , est sic acti, by the party himself. 71

The Law iudges that it is illegally done, as not done at all. ibid.

Leges priores per posteriores abroguntur, & contra. ibid.

Lex non cogit ad vana peragenda. 73

Lex non haeret in syllabis vel literis modo de substantia constat. 75

The Law is sometimes stricter then the words of the party in force. 76

Lex non est curiosa. ibid.

De minimis non curat lex. 78

Law presumes more then the party himself says. ib.

Lex intendit optima perfecta & effectualia & legalia. 79

Lex omnia suaviter, & ad melius disponit. 80

Lex semper dabit remedium. 81

Lex indicat de insufficienter vel ut me factis quasi omnino infectis. 82

The Law will accept of that is good in grants or pleadings, and reject the surplus. 84

The Law is more agile in working then the act of the party. 85

The Law where it enioyns an Act to be done will provide be shall not be hurt, à latere that doth it. ibid.

The Law regards the principall thing, and not additionalls. ibid.

The Law adiudges the deniall to doe a thing as not done. ibid.

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## Errata.

{ Pag. 4. obligor for obliger, p. 9. l. 8. for R. I. S. p. 17. redi-  
derunt, 41. Maregium 43. margine 29. E. 3. 48. margine  
versus cap. 5. pro vide 68. l. 13. sued l. 24. bene 69. l. 14.  
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{ preferred 77. l. 11. reseit l. 14. manu tenere 28. devifa-  
read } vit l. ultimis lassile 84. l. ultima reseive 87. property, 99  
l. 4. alius l. 5. conus 101. l. 25. patronage 120. l. 17. Rever-  
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Eliz. 137. l. 20. gets for its.

omit- { Pag. 14. l. 16. to p. 23. marg. lin. 20. F. N. B. 44. b. c. 52 E.  
red } 47. Dyer add. 365. p. 67. l. 16. after pound add. by C. 95.  
l. 15. infess, add. C. Some mistakes are in the pricks  
and commaes.

卷之五

**H**e act of God shall prejudice no man. Upon this reason it is if the heire at full age tender Livery, and dye within three moneths,

which is the time given by law to finish his Livery, he shall have no prejudice, but as much benefit as if he had actually sued it forth, and the interest of the King is determined. Lessee for the life of I.S. is disseised, now to recover the mean profit the Law requires an entry, if I.S. dye, which is the act of God, by which his entry is taken away, he shall mayntain an action of trespass without entry, and recover the mean profits. Lessee Covenant to leave a wood in such plight as it was in time of the lease, it is subverted by tempest, he is excused of his Covenant. The same Law is of impossibility, as if it be impossible to gain actuall seisin, in such case tenancy by the courtesie shall be without it, as in case of Rent and Advowson, and the wife dye before the rent day, &c. *Exception out of this rule is*, if the act of God is not so miserly, but the folly of the party intermixed, as where after battle joined, one of the parties becomes blind by his own fol-

8 Report Halls  
Cafe.

38 H.6.28.

1 Report.98.

2 H.3.

22 Att. 93.

4 H. 6. 3.

32 Eliz.

Report Case  
Archer.

ly it shall not excuse him which otherwise would. A River changeth his course and runs upon my ground , the common road shall be upon this as formerly, because it is not merely the act of God , but my negligence. In like manner, the rule of Impossibility fails where it was known to me before , and therefore if I am bound to go to *Rome* and return in one day the bonds good. So if the matter was not merely impossible , as if I. S. assume to carry goods safe by water , and they are overthrowne by tempest , this shall not excuse him because he might have carried them another way, &c. but if the carriage was to be by Sea otherwise it had been. Lastly, impossibility shal not excuse where no person is in being at the time to receive hurt by the impossibility, as tenant for life is the remainder to the right heires of I. S. Tenant for life is disseised, and disseisor levies a fine at the Common Law , I. S. dyes , his right heire shall be bound , &c. though it was impossible he should make claune , or entry for to avoid it, &c.

2 *Act of a Court shall prejudice no man & contra.* In assize a verdict is given for the Plaintiff and at this time Corne was grow-

growing upon the land, the assize is ad-  
 journed into the Common Place and be-  
 fore judgment given the corne is severed <sup>41 E.3.19.</sup>  
 and taken away, he which recovered shall  
 lose the Corne by this adjournment. A  
 man ought to have the priviledge of the  
 Chancery, as servant, the Court advises <sup>35 H.6.3.</sup>  
 upon it, and in the mean time the master is  
 discharged of his office, yet the servant shall  
 have his priviledge. The Court inlargeth  
 him that is in execution contrary to the <sup>2 E.4.8.</sup>  
 Law, its said the party is without re-  
 medy, *ut lagarie* after judgment is pardo-  
 ned by the Chancellor, the debt not satis-  
 fied which is a wrong, Its left doubtfull  
 whether the party can have any remedy,  
 yet for the most part the party shall not be  
 prejudiced, as if the Court advise upon  
 a protection and before the day, in  
 Bench the protection is repealed, or a  
 Writ of Error cast in upon the first Re-  
 cord, upon which this in question depends,  
 yet the Court will giye judgment. After  
 Counsance of plea prayed, the Court gives  
 a continuance, this shall not hinder the  
 party to have Conuiance of plea. See *In-*  
*stitutes 3. title Appeal.*

<sup>35 H.6.54.</sup> 3 Who shall do the first Act, where it is

B 2                   doubt-

<sup>2</sup> Eliz. Dyer  
172.

<sup>10 H.6.6.</sup>

<sup>35 H.6.54.</sup>

14 H.8.18.

doubtfull. Hee that shall have advantage by it shall do it, the condition of a bond is if the obligor resigne his Benefice for a pension to be granted to him as they can agree, then the bond to be void. It is not sufficient to agree of the pension, but the obliegee shal tender a deed for the assuring of it to the obligor. So where a Covenant is to assure the Mannor of D. to I. S. before Michael. next, as Counsell shall advise the Counsell of I.S. shall give the advise, and also tender the assurance. Note where the thing is certain to be done, hee which is bound in assumpſit, or a bond shall do it to to save an action, and damage to be recovered against him. Assumpſit to make a feoffment to I. S. is, and an action is brought without request or tender of any deed of feoffment, and well mayntainable because the other may make it without deed and request is not agreed upon.

Old book entries, 5.

Condition of a bond is that the obligeſſe shall bring three ells of cloth to the shop of the obligor which shall be measured, the obligor shall do it to save his bond, *a-liter est*, if the obligor is the tailor. An obligation is to build a house, as I.S. shal devise the obligor ought to procure this advise to save his bond.

E. 3. Car. per  
Noy. in Casu.  
& Brown  
Stroude.

4 *Act implicit where not sufficient but shall be explicit.* Two Garnishers are in a reall action, and a stranger in their presence doth speak the words of garnishment, this is not sufficient, but they in proper person ought to do it themselves.

43 E.3.32.

5 *Act of an Enemy shall turn to my benefit.* As where severall *Nisi prius* are sued by the Plaintiff & Defendant by proviso, and they have severall *Habeas Corpus*, the Plaintiff faile in *Jurata Continguanda*, but the Defendant doth continue it, the Plaintiff shall take avail by it, as if he himself had done it.

4 Eliz. Dyer  
217.

6 *Act subsequent shall be guided by agreement precedent.* I.S. pays a hundred pounds at the day in the condition limited, if agreement was before that hee should have part of that hundred pound againe, this is no performance of the condition. A. brings goods into the Market to sell and there was an agreement before out of the Market for these same goods, if I.S. had the true property of these, no property is altered by this sale. *Sic è converso.* Actprecedent by act subsequent, as where the Lord distreins his tenant, and after kils the distresse, this in Law is a Declaration

Institutes 1.

109.

1 Mar. Dyer 99

22 E. 4. 8.

of his intent from the beginning ; and makes him a trespasser. Land descends to two daughters, the eldest enters into the whole, and makes a feoffment with War-  
9 Report Case ranty, this declares the generall entrie to be  
Dowman. for her self, and not for them both, and con-  
sequently it is no Warranty by disseisin.

7 *Act imperfect of the part of the one party shall be so of both.* As a woman with-  
Institutes 1. 79 in the age of 12 years is married to a man  
of above 14 years, in this case though hee  
may consent to marriage, yet because shee  
cannot, he is at liberty to dis gree to this  
marriage as well as the woman.

P 42 Eliz.  
Case Cofterd.

8 *Act executed where it shall be defea-  
sible and contrary.* The husband and wife  
joyn in a Lease of the Lands of the wife,  
or grant her goods, and after they are di-  
verced this shall stand. So when an Ad-  
ministrator doth neccesary acts, and then  
the Executor proves the Will, yet those  
acts shall stand firme ; so where a Parson  
makes a Lease, and after is deprived be-  
cause a Layman, the Lease shall stand.

Institute 1.  
138. & Kell.  
126.3 Report Case  
B. & B. 26.

9 *One Act may inure to two intents.*  
The tenant infests the Lord and a stranger,  
and makes livery to the stranger, in name  
of both the Lord efters and distreins, this

is a disagreement to the feoffment, and a devesting of the Freehold. Tenant for life impleaded, prayeth in ayde of the Grantee <sup>38 H.6.37.</sup> of the Reversion. this shall amount to an Attournement. Lessee Surrenders to the Grantee of the Reversion, this amounts also to an Attourment. A Parson demiseth <sup>12 H.7.15.</sup> to his Patron who assignes this over to I. S. this is a good grant of the teatime, and also a Confirmation, the same Indenture <sup>6 Report Case</sup> may revoke the old uses, and declare new <sup>5 Report 15.</sup> <sup>Fitzwilliams.</sup> uses.

10 *Actori incumbit onus.* A partition is sued of the Mannor of D. one defendant alledges that part of the land was purchased, & is not parcel of the Mannor, he ought shew the certainty of that parcell, otherwise the Jury are not bound to find it, if they do that, *est veresimile.*

11 *An Act to himself, a man may doe and contrary.* A Sheriffe is Plantiffe, hee may take pledges to himselfe, and hee may execute a *Replevin* against himself as I.S. tenant in tayle, vouch himselfe to save the tayle, hee may have Processe against himselfe. The Sheriffe is in feisin of a Baylwick, of a Liberty by feisur, he himselfe as Sheriffe shall command himself as Bay-

F.n.b. 4.e.

10 E.2. ff.  
Triall 100.Michel 14. &  
15 Eliz. Case,  
Vic. Norwich.

20 E.4.7.

9 E.4.33.

Trin.43.  
Eliz. Case.  
Sir Thomas  
Gerrerd.

ly of that Liberty, to execute that Processe. There is a Writ in the Register directed to the Sheriff, to inhibit himself, that hee proceed not in a Writ of right, a Bishop is defendant in a Writ of Dower, he himself shall certifie the loyalty of the marriage in his own Case. The old books differ whether a Sheriff may summon himself or no, but later authorities have resolved it, that he cannot, but where two Sheriffs are, the one may summon the other, but then note a speciall mention shall be of that in the Writ, and direction that the other shall summon him. It is holden, the Sheriff who is demandant may execute all processe till it come at the *Venire facias*, otherwise where he is tenant. The Archb. of Canterbury is made executor to one, who hath *bona notabilia*, if he wil refuse the executorship hee shall make this before his Commissary and not by himselfe; a Sheriffe is conusee of a statute, he cannot execute a Liberate himselfe. It is doubted whether a steward may admit himself to a Copyhold or no. See more of this title, 14 H.8.31. *Plo.casu, Plat. vicesimo primo 6.16. Coke Jurisdiction of Court.105.*

12 Where part of an *Act* cannot be performed

formed, yet the rest shall. The condition of a bond is that I.S. shall be assured at *Michael*, of the Remaynder of the Mannour <sup>40 E.3. 12. Cas</sup> of D. after the death of I.S. and that H. <sup>10. de Peche.</sup> shall be present at this assurance, H. dyes before *Michael*. yet the assurance shall be made, the same Law is if the words were that R. himself should be present, though he comes not then and there, yet the assurance shall not stay of that, because his presence is not necessary, For the Remaynder may be limited to him absent.

13 One shall not have benefit of his own *Aet*, prejudice he may. A man is <sup>6 E.4.4.</sup> *ut-lage* of felony, or condemned in debt, execution shal be done notwithstanding. And this holds against the King himselfe. Q.

*Mary* who had an estate *dum sola fuerit*, <sup>5 Mar. Dyer,</sup> granted a Rent, the Reversion discends to <sup>141.</sup> her, and then shee marries, it seems shee shall not avoid this Rent by her mariage, *contra est aliquando*, by the folly of another, as one enters a bond to A. that he and A. shall stand to the arbitrement of I. S. or that A. shal take a Feoffment of him. A. <sup>33 H.6. ff.</sup> refuses, he himself shall take the forfeiture <sup>barr. 165.</sup> of this bond for the folly of the other to undertake this. If one that hath Collation

F. n. b.

33 E. 2.

44 A. 35.

44 E. 3. 4.

44 E. 3. 13.

33 H. 6. 26. per  
Prisot.

22 H. 4. 2.

to a Benefice, do present to it hee hath lost his Collation, and subiected the Church to a lapse, &c. so if a Parson impropriate present to the Church, it makes it disappropriate. A Lord holds land for the value of the mariage by two yeeres, and the tenant enters before all is levied, the Lord shall recover the whole value. An heire who held by homage and fealty takes his land of the King upon office found, that hee held by forty pound *per annum*, he shall be bound all his life time to pay that Rent so prejudiced by his act.

14 *One shall be punished for the Act of another.* A disseisor ceaseth, the disseisee enters, he shall be charged in a *Cessavt.* Accompt is brought against two, the one enters into the accompt, and it is found against him, it shall bind both: One is imprisoned in the Marshalles, a stranger breaks the prison, the Marshall shall bee charged for the whole debt. I have a way over thelands of twenty men, one of them stopsthe way in his land, I shall have an action against all those over whose lands the way was. A rate is put upon a towne for the fees of a Knight of the Parliaiment, the beasts of him hath payd his part, are

taken for the residue, hee shall not have a replevin, but the beasts shall be sold to pay this dutie.

15 *One shall not defeate his own Act:*  
*& è contra.* Lessee for years grants the next avoydance, and then surrender, this shall 8 Report Case not destroy his own grant. A grant common to B. for a horse, and after grant a Rent charge, the horse of B. shall not bee destrained. Brook the chiefe Justice did put out an Officer which he himselfe had admitted before: And so an Ordinary may admit the same partie able, whom he hath returned disable before.

16 *Agens & consentiens pari pena plectuntur.* If one takes a horse by wrong, 43 E.3.43. by my consent, trespass lies against mee, A. mayme, B. by assent of C. appeal lies against A. and C. and damages equally against both, otherwise it is where interest is to be bound, as Dean and Chapter, seised in *simul*, the Dean leaseth the Land with consent of the Chapter: This is not good.

17 *A Posse adesse non est bona argumentatio, sic à non esse ad non posse.* A devise is of Land in fee, so of goods, if the Devisee dye before the Devisor his heire,

20 H.7.10.  
 5 Mar. Dyer  
 151.

22 Aff.82.

Dyer 40.

Plo.345.  
Case Brett.

18 E. 4. 5.

3 E. 3. 64.

5 Report Case  
Broughton.

18 E. 4. 28.  
50 Aff. 5.

6 Report, Sir  
Anthony Mild-  
muis Case.

nor Executor shall gaine any thing by this Will. A. is indebted to B. 200 pound, and delivers goods to him to sell, *meliori modo quo poterit*, to pay himselfe hee is proffered 200 pound for the goods, and refuses it, and after hee sells them for 12 pence, A. shall answer the residue of the debt notwithstanding this proffer and possibility was, &c. Lands have never been departed betwixt males, therefore cannot be is a *non sequitur*.

18 *A posse ad esse bona fit argumentatio.* Condition of a bond is to save harmless without damage, if he may be damni-fied, though he is not *in facto*, the condition is broken. If an Escheter may seise goods for a forfeiture, it is all one as if hee did, when he will he may. A husband hath a terme in the right of his wife, and is a debtor to the King though hee dye, this term shall be charged to the King, the same law of one joynt tenant debtor. Tenant in tayle, because it is in his power to dock the remainder upon this, the law takes this as done, and for this reason puts no value upon it, as Assets to an heire, &c.

19 *A non posse ad non esse bona est argumentatio.* The condition is, if a rent is  
be-

behind and no distresse, he may re-enter, he demands at the day, and the doore is shut against him, albeit a distresse is in the house, because hee cannot come to it, the condition is broken as if no distresse were there, see if request shall be to open the doore.

Pasch. 23. Eliz.

20 *Act me invito fait nest mon act.* I chase Deer out of my land with a dog, and after I recall the dog, but hee notwithstanding pursues him and kils him within the liberty, I shall not be punished for this within the statute. An assize of Common is brought and hanging this the Plaintiff's cattle escape thither, this shall not abate his Action.

21 *Argumentum à minori ad majus tenet affirmative.* Upon this reason a Proviso in the statute of ordinances extends to the High Commission, which is above them, and the *contrary is also true*, as a statute which speaks of Deanes doth not extend to Bishops. So the Statute of 8 H. 6. which speaks of Clerks raising Records, a Judge is not within it. So in Institutes 3.72. expsition of Treasons this argument doth & 20. not hold the lesse is made treason. *Ergo* the greater, &c.

5 Report Case  
Cardry.

36 H.8. Dyer.  
60.  
8 E.4.19.  
13 E.4.9.  
Lynius 35.  
Plo.322.  
31 E.4.47.

22 *Bonum publicum privato preferendum.* Upon this reason a man may dig in my soyle to make Bulwarks against enemies of the King. So fishers in the sea may come upon my land, &c. Its lawfull to break a doore to finde a Felon if felony is done. Upon this reason the Civillians say, *Si piscator ligat navem ad arborem dominus arboris eam incidere non potest*: upon this reason it was that the King might cut my trees for repayre of his Castles before *Magna Charta*. And if the King grant to a County or Hundred, that they shal not be Jurors in Enquests, it is void, because publice prejudiced.

Plo.292.  
Case Chapman.

23 *Causa qualis tale Causatum.* I covenant with one, & his executors make a lease of B. Acre before *Michael*. and the Covenantee dyes before *Michael*, and I make the Lease to his Executor, this Lease shall be in the same degree as the Covenant was, and so shall be to the use of the testator, and Assets in the Executor, the same Law is if an Executor have a villain who purchaseth land, hee shall have this as he held the villain, &c. *fallit regula*, In case assise is brought boyltly against father and his daughter, and the father sayes

he is villein to I. S. howbeit shee is of the 10 A. S. T.  
like quality, yet this plea shall not be ma-  
teriall to her.

24 *Causatum non excedit suam cau-  
sam.* Tenant for years grants a Rent for  
life of the Grantee. He shall not have free  
hold in this Rent, but if he die within the  
term, the Rent shall cease, and shall be as  
if granted for so many years as the Gran-  
tor hath, if the Grantee so long live,  
but see *ibid.* that for necessity of reason,  
and by fiction in Law, it may be other-  
wise.

Plo. 524.  
15 E. 4. 8.  
Plo. 555.

25 *Causans damnum equalis faci-  
enti.* If one breaketh down a gap in my  
hedge, by which beasts escape into my

9 E. 4. 4.

Close, from the Common adjoining, now  
the trespass which at the first was onely  
4. d. may bee 20. lib. by the insuing da-  
mage.

Stamford 17.

Two combat, and the one kills the  
other, & this was by reason of the words  
of a woman; shee was arraigned for this  
felonie.

48 E. 3. 25.

Trespass for burning the Plan-  
tiff's house, & declares that it was burnt by  
negligence of the defendant and holden, a  
good count to maintain their writ. If the  
partie sheweth other goods then he ought to  
do in a Replevin, or in a Cap. sa. sheweth a

11 H. 4. 91.

wrong man

man to the Officer, he shall be charged in trespass, and false imprisonment, and so shall the other too. Somtime the Law more punishes the causor then the actor of an injury as a *Capias* issueth where it ought not, he that took it out shall be punished, but the sheriffe excused.

5. 26 *Conjunctive, and collective, words taken seorsim and discrete.* Three men submit themselves to arbitrement of all matters betwixt them and A, this shall be not onely of matters they have joynlyt against A, but what either of them hath against him. An estate is limited to two, & if they die without issue, the remainder to another in this case, upon the death of either of them, the estate as to his part shall go to the remainder man. Severall

16 Eliz. Dyer demises and rents are in one Indenture  
Cale, Clatches. of lease and lessee Covenants, to pay *reditum predictum*, this Covenant extends to all the severall rents : Two grant *omnia bona*, so A. releases to B. and C. all a-

No. lib. d' En- tries 115. ctions, this extends to their severall goods and actions, as well as joyn. Three severall men make three severall Covenants, and in conclusion of the Indenture one is bound to performe the Covenants made be-

19 H.6.6.

21 H.7.6.

betwixt A. I. and S. This doth extend to the Covenants *separatim*. *Ascire facias* is against the successor of a Prior of D. 17 E. 4. 2. and shews a recovery against his predecessor and part behinde in his owne time. *Et quod non redierunt, &c.* and this ruled good. See *Dyer* 150,

26 *Causa cessante cessat effectus.* If the offence is pardoned, for which the Sheriff ought to be amerced, no amercement shall be. The husband and wife lease by deed, he dyes shee accepts the rent, if the Lessee lose the Deed of lease, she shall avoid the lease, for this was the sole cause she was estopped, &c. The Feoffor shall have and hold the Charter of the land against the Feoffee, by reason of the Warranty, but if this determine he shall hold them no longer, but note it is cause executory is intended, as Annuity granted *pro consilio*. I grant to I. S. that I will clayme nothing in the Mannour D. of which the Grantee is seised, and for this he grants me an Annuity in this Case the entry of the Grantee wil not cause the annuity to cease, and see *ibid.* A good Case of an Advowson granted for an annuity. And note it is not in the power of the Grantor to cease his own

C grant,

37 H. 622.  
5 Report Case  
Vaughan.

36 H. 624.  
15 E. 4. 17.

1 Report 2.  
4 Report,  
Case Abbot.

15 E. 4. 3.

24 E. 3. 53.  
4 Abbot and  
Lewes Case.

grant, as if hee will say to the Grantee hee will not have his Counsell, the Annuity shal continue, though *Richel* in 7 H.4.16 thought otherwise. A man grants to make a new pale for the old one, if hee cannot have the old one, he is discharged to make a new one, yet in *Pigots* case, if he can have an Action for the old pale, he is bound to make the new one. Note another difference, where the Office determines for which the Annuity was granted, that shall cease also. see 12 *Aff.* 41. 20 *Aff.* 27 *E.* 4. 10 49 *E.* 3. 45. 1 *H.* 4. *ultimo*. Note another difference. It must be *causa* not *circumstantia*, which causes this Cesser, and therefore where Covenant is to make Divine Service in the house of the Grantee every Sabboath day, though the Grantee depart with the house, yet the service shall be done. But if the cause cease but in part, the whole Annuity shall be lost. The King grants the office of a Keeper to two, and the one fails in discharge of his duty, the the whole fee shall determine. So if Annuity is for Counsell to two, and the one refuseth, *fallit hec regula*, as where a Guardian in Chivalry hath the body in ward, and there be other lands in Soccage, the next of kin shall not have this land in

15. *E.* 43.  
5 *E.* 4. &c

*Plo.* 381.

6 *H.* 41.

*Plo.* *Case.*  
*Nevill.*

Ward, though the body of the Ward is to Plo. Case, another (which is the cause) but the next *Carrell*. of kin to whom it cannot descend shall have it. Arbitrement is to pay ten pounds for sixe yeeres, to educate B. B. dyes, yet the payment shall continue during <sup>FECTION 11</sup> Dyer 329. the terme, Processe agard to the Coronar for Cosinage to the Sheriffe, who after becomes out of office, and another put in, yet the Processe shall continue to the <sup>14 H. 7. 31.</sup> Coroners. *Vide* more of this matter and <sup>18 E. 4. 3.</sup> title, 4 Mar. Dyer 141. Kell. 124. Davis Reports 3. and Case Lutterell 4 Report.

27 *Coliquintida parum totum Jus vi-  
tiat.* A suit is in the spirituall Court for Dwood, titheable, if any part is free from ecithes, a prohibition lyes for the whole: if for part of the action, though the lesse part, <sup>11 H. 4. 32.</sup> jurisdiction ought not to be to the Court anywhere it is begun. It shall be outed for all. A bond is made upon a usurious contract, or part, all shall be avoyded. If my Coun- <sup>In 33 Eliz.</sup> ell labour jurors, hee is a mayntainer <sup>ab</sup> Case Paramor *nitio*, even for his Counsell. Husband and Robinson. Husband wife do vary in the declaration of uses <sup>22 H. 6. 6.</sup> for the particular estate as for life, and concur, as to the fee it is void for all. Divers <sup>2</sup> Report Case Dovenants in an Indenture are void, be- <sup>Beckwith,</sup>

cause it is concerning a grant of an office contrary to the Statute 5 E. 6. and one Covenant therein is good yet the bond to performe Covenants is void for all. Superstitious use intermixed infects all the good, so covine.

28 *A Coniunctis ad devisa male arguitur*, as the Ordinary may take a refusall by all the executors, Ergo, of any is false. One is heire to husband and wife, Ergo, to the husband is a *non sequitur*.

29 *Coniunctorum utrumque oportet esse verum*, and performed, as where the condition of a bond is double, so the consideration of assumpsit both shal be performed. A licensere recipere & retinere, both shal be done, lease is & bond to pay 10*li.* rent if no restraint be of sowing & making woad, and after a Proclamation is to prohibit sowing of Woad, he shall pay his rent in this case. Rent is granted out of land in the tenure and occupation of I. S. though he had it all in Lease, if hee have it not in occupation, the land is not charged.

30 *Damnum asque injuria, is not punishable*. As if a Schoole-master erect a new Schoole to the hurt of the former Master; so if a new Mill is set up to the

pre-

1 Report. 82.  
Cal. Colshill.

2 Report 113.

9 Report Case  
Benluse.  
9 H. 7. 19.

44 E. 4. 21.  
4 Report Case  
Digbie.

T. 32. 1. 11z.  
Rot. 431. Case  
Sberuod.

11 H. 4. 47.  
22 his 14.  
7 E. 3. 65.

prejudice of the ancient one, to which all within the Town resorted before no action lies, so where arable is laid down to pasture, by which my ancient pastures give not such a rate as formerly, or agis-  
ment not so much. 31 *Sic è conver-  
so injuria absque damno is not actiona-  
ble.* A man is affied to a woman, and when the bains are published in the Church, another forbids them, say-  
ing, that hee hath another wife, which is false, this is *Injuria absque damno*, be-  
cause he may compell her to marry him Trin. 5. Car.  
being affied. I may enter into your close, Case Ap. Iohn.  
and put out Savages, or your own cattle Michel. 12.  
out of your corne, which have escaped in H. 7. Kell. 2.  
by your own fence.

32 *Deus & natura ferenda.* If the water change his course, and run upon my Land, the common road shall be there as 22 Ass. 93.  
before.

33 *Dictum partis, is not exclusive taciti dicti legit,* Lessor Covenant Les-  
see shall have fewell by his assignement, he may take it without assignement. A rent is granted to distrein for this by the Baily of the King, yet he may without him.

Dyer 19.  
44 E. 3. 18.  
40 E. 3. 10.

34 *Disjunctorum sufficit alterum*

*esse verum.* It is pleaded the Bishop & his predecessors have used to grant such an office, *Tali persone, sine personis* as he pleaseth; this is no affirmation that hee had granted it to more then one, so that issue can be taken upon that, but the plea is true, if he had granted it to one onely.

35 *Distructio facti, shall be eodem modo quo creatio.* A specialty must be avoyded by deed, an use declared by Indenture shall not be altered but by indenture, yea, though but in abatement as resceit of parcell upon a deed shall, not bee admited without deed of it, otherwise it is where matter of fact intervenes, as in covenant before he can have an action: so in case of a rent because of distresse is to be payement is a good plea without deed, and so is it there, though he bring a Writ of Annuity, *quod nota.* A man is bonnd he shall not occupy my land in D, I after let it unto him, this is not to purpose to save his bond without writing: and yet matter in fact wil aid an imperfect writing to make it good, as where an Acquittance was pleaded to a bond, and upon sight of it, it reherses it was money due upon Purchase of Land now by an Averment that this

7 E. 4. 15.  
5 Report  
Case, Com.  
Rutland.

15 H. 7. 10.

21 H. 6. 33.  
6 Report Case  
Blake.

5 H. 7. 33.

this bond was taken after the money due 3 H.7.14.  
for the purchase, and agree in the summe,  
by this the Acquittance is helpt.

36 *Dictum partis*, which is no more  
then *dictum Legis* operates nothing at all.  
Lease is for life, and the Lessor grants the  
Rent to A. for life, in whose hands so ere <sup>26</sup> *Aff. 38.*  
the Land shall come, this is no more then  
for the life of the Lessor. A gift is to two  
of land, and *uni eorum duciens*, *viventi*,  
they make partition and the one dyes, the  
survivour shall not have his part by these  
words, and *uni eorum*, &c. which is no  
more then the law would have said. A  
bond is to do such an Act (if the law per-  
mit) its all one, as if it had been to doe it  
absolutely: see 9 Report, *Flowers Case*. 4  
*Report Case Burrow*. 2 H.7.9. *aliter ca-  
su*. As a man charges his executer to pay  
his debts, by his Will by these words, the  
debtor may sue a man in Court Christian,  
*quod quere*, by the allowor of this book.  
A bond to infeoife A. if be please, though  
the law says as much that he cannot be in-  
feoffed against his will, yet it hath this op-  
eration, to alter the law in this, that the  
obligor is not bound to make this feoff-  
ment till A, signifie his minde, &c. The

<sup>30</sup> *Aff. 8.*

<sup>11</sup> *H. 8.6.*

Statute 21 H.8. says, that he who takes a second Benefice, the first shall be void, which the Ecclesiasticall law said before, yet this operation is by this expresse saying of that A&t, that it shall be void without notice, where value is above eight pounds.

*Vide 17 E.3.7. Dyer 46. & 264. Perkins 105.*

38 *Dominus & Servus, Judge and Minister, Subject and Sovereigne, Idem non erit, so Judge and party.* A woman is Guardian of the Fleet, and takes one of the prisoners to husband, this is an escape. If one hath a Benefice and is made Bishop of the said Diocesse, the Benefice is void. He which is Justice of the Peace is made Sheriff, the Patent of Justice determines. A man hath an Annuity for service to the Prince of Wales, he is made King, the service shall cease he is no longer Prince. Remembrancer is made Baron of the Exchequer, this causes this Office to cease. So one shal not be Judge of the Kings Bench and Common Pleas. *Persey arraigned an assise, with other Plantiffes, and after hee was joyned in Commission of assise, and ruled that no proceeding can be upon this Commission. A Charter to hold, Plea,*

Plo. Platts case

E.3.

Plo. Sir Tho. Wroths Case. 3 Eliz. Dyer 197.

5 A&t. 3.

Plea, licet ipse met sit pars, &c. Is not good if there be not words to make another Judge when such a Case happens. A Con- 8 H.6.20.  
stable may apprehend him that breaks the peace upon himself, but that is because it 5 H.7.6. is an offence to the Crowne more then to himselfe.

Sheriffe is Judge in redisseisin yet hee himselfe returnes the pannell, so Judge and Minister, but the reason is, because he is made Judge by statute, not as the She- Kell.85.  
riffe, but a person described by this name.

By the Civill Law a Judge may punish an injury to himselfe by imprisonment or mulct, *Sed si pars verberibus aut capite Boden 309.*  
*mulctanda est propter injuria atrocitatem abstinendum est.* A Writ of Error in the Exchequer is directed to the Treasurer and Barons, commanding them to have *Institutes 4.*  
the Record before the Treasurer and *105.*  
Chancellor, and good.

38 *Dignior dat nomen rei, & regulabit eam.* A grant is of the Office of the Kings Tennis Court, &c. The play of the 8 Report Case Household is included, and that onely gives *John Webb.*  
the name. Where speech is of I.S. it shall be taken the father and not the son. Where speech is of a Will, it shall be intended the

Dyer 314.

the last Will where more Wils are, &amp;c.

10 E. 3. 26.

40 Duty once discharged is always discharged. The Ordinary once refuses a Clerke for insufficiency, he is not bound to take a second examination of him.

44 Aff. 6.

41 *De non existentibus & aliter existentibus, quam lex vult eadem ratio.* If a Record is removed into a Court, but not by due processe and course of law, its all one as not removed.Report  
Case Frost.

16 H. 7. 16.

42 *Equipollentia habent eundem in lege vigorem.* A Writ comes to the Sheriff to arrest A. which was in his custody before, and upon the escape of him an action upon the Case is brought, and declares that hee was arrested, &c. & bene. A Writ is to the Sheriff, and hee returns that *virtute precepti*, he hath done so and so, and bene and equipoll, *virtute brevis*, &c. In a Writ it is said, *quam clamat esse, ius*, this equipoll fee-simple, and therefore if in the following part of the Writ he instance in a lesser estate, as *ex dono* for life, or, &c. The Writ shall abate, *Vide Pl. 542*

39 H. 6. 58.

555. Dyer 171. 203. 17 E. 31. But note this exception to this generall rule, that words of art shall not be supplyed by equipollent words, as voluntarie, &amp; ex mali-

tie praecogitata interfecit, is not sufficient in Indictment of murder, but the word *murderavit*, must be. A Writ against M. <sup>9 Eliz. 261.</sup> late wife of *Thomas Com.* A is all one as if he had called her Countesse of *A-* rondell.

43 *Eadem ratio, Idem jus.* So Bracton *de similibus à similia eadem ratione pro-* cedendum. The stat. which outs *non clayme* in fines, by reason of wars, takes away also *non claime* in a Writ of right, for the <sup>Plo. 59. & 160</sup> same reason is, &c.

44 *Expressum & particulare facit cef-* fare *tacitum & generale*, In this notion its <sup>28 H.8.15.</sup> said a deed is a private law amongst par- ties to it. By the word *demise* assignee of a lessee for yeers shall have an action of co- venant if he is disturbed, but if there is an *express* covenant in the deed, that the les- see shall enjoy the house demised, &c. without eviction of the lessor, this shall <sup>4 Report</sup> restraine the covenant to the lessee him- <sup>Notkes Case.</sup> selfe. An Abbot brings trespass against the Parson of C, and declares of cutting trees, *ad deteriorationem Ecclesiae prædi-* Etæ, though every Abbey is a Church, yet because it is not named before, this refers <sup>18 E.2. ff.</sup> to the Parson which was named, and so <sup>6 Report 828.</sup> makes

makes the Writ insensible & abate. A man  
devises land to his eldest son, the remainder  
to his younger son, the remainder *proximo  
de sanguine* of the devisor, the eldest shall  
not take by these generall words, but any  
other not named before. *A.* hath two  
messuages, and demises that in *D.* and all  
his land in *S.* to *I. S.*, the messuages in *S.*  
shall not passe. *Exception.* Note, where  
that the expresse is against the nature of  
the estate, as a gift in tayle, and an express  
clause is, he shall not do waste, or suffer a  
recovery, or that he shall hold of the Lord  
Paramount, these shall not crosse the im-  
plicit *dictum legis*, in those severall par-  
ticulars, and it is also in things insepara-  
ble. As Warranty by *dedi* is not destroyed  
by expresse Warrantie. *Sic regula fallit in  
casu*, the thing is inherent to the estate,  
as covenant expresse is the lessee and  
his executors shall repaire the house demis-  
sed, &c. This shall not excuse the assignee  
who by implied covenant in law adhe-  
s Redort case rent to his estate, is tyed to repaires, except  
23 Broughton. also in case of matter of record this,  
though implicit will controll the expresse  
act *in facto*, as a woman enters into her  
joynture, & then brings a writ of Dower.

*Ibid.*

22 H.6.14.

Perkins 660.

6 Report Case

Sir Anthony

Mildmay.

2 E.4.5..

7 Report

Case Nokes.

5 Redort case

23 Broughton.

5 Report

Cap. Vernon.

So where the expresse act is vaine it shall have no such operation. See *Dyer* 376. *Kell.* 123. *Doctor and Student* 94. And so it is also where the expresse act or word is additionall, and not contradictory of the first, as a devise is to pay ten pound rent to *A.* and if it is behinde six weeks, &c. that *A.* may distreine, this shall not avoid the entry upon the condition if broken, but it is variety of security for this rent. So where that which is but secret is dehors, there both may stand without the one outing the other, as bloud may be averred to have beene the consideration to rayse an use mentioned in an Indenture, though money only expressed within the deed.

18 Eliz.  
Dyer 348.

1 Report Case  
Mildmay.

46 *Exceptio firmat Regulam, concessionem, &c.* A man holds by homage, eccluage and rent, the Lord grants the rent *cum pertinentiis*, the Seigniory doth not passe by this grant, but if he had laid (excepting relief and escheate, it is doubted. Common is granted for all cattle excepting hogs, this exception inlarges this to goats, &c. A man grants all his trees excepting payr-trees, apple-trees, now passe, which otherwise would not. The Statute of

29 Ass. 30.

23 Incidents

24.

14 H. 8. 1.

2. R. 2.

H.6. speaks only of Sheriffs, yet because in the end of the statute there is an exception of Guardian of the Fleet. It is holden all other Guardians are included as well as Sheriffs. But note, *fallit hac regula*, where the exception is idle. And therefore though the statute 5 E.6. hath an exception that ingrossing of salt shall not be within that statute, any ingrossing of vi-  
ctuals, yet, *non sequitur*, it is viuell within any statute, for it is *condimentum* onely. And such clauses are put in to satisfie ignorant Burgesses; rather then for necessity, so in the statute 43 Eliz. cap. 1. there is an exception in that statute, which provides against alienations to the King, in case of Ecclesiastical persons it follows not, therefore that other persons upon whom a disability was by law before to alien as infants mad men, &c. May now give away their estates, because Ecclesi-  
stics are onely excepted.

47 *Etymologia verborum non præbet firmum argumentum.* And therefore to argue from the word joyniture of a woman, that therefore it must be a joyn estate with her husband is a fallacy, for its a good joyniture though the estate be to her

22 Eliz. Case  
Taftley.  
11 Report 74.

Michael. 7.  
Car. in b. Roy.  
Information.

Dyer 340.  
Institutes 177.  
7 Report 27.

her selfe sole, yet such arguments exhibits ornament in the discourse, where it is agreeing with the law.

48 *Exitus acta probat.* The copying out of a Libell proves as evidence that he did publish it. The tenant is distreined 8 Report Case without the mesnes fault, yet if hee after does not what the law requires, as putting his own beasts into the pownd, for to free the tenants beasts, the distresse shall now be said in his default. *See 9 Report, Case Meriell Tressam.* And *vide*, the Case of Estray, and how it shal be demeaned that it prove not tortious. So in those cases 8 Report 146, of liberty given by law, as to come into a Tavern to drink, and he take away a piece of plate, this shew<sup>s</sup> the act of comming in tortious *ab initio*, &c.

49 *Expositio verborum.* *Averia* is any live thing as fish, hens, capon, &c. *Aut*, albeit it is a disjunctive adverbe, yet in the Kings case it leaves his genuine sense, as where he grants land, &c. *Quae quidem terra concealata, aut redditus substracta*, &c. If the land is not concealed, though the rent is substracted, and so the disjunctive, *aut*, is performed, yet the land passes *Cale Hugh* not. *A, ab, abs.* *Ab oest abis Trin.* is the *Vaughan*.

last

21 E. 4. 37.

last day of the four, *à festo Pascha*, must be ruled by the Canons, *Abathia*. In *Abathia*, this extends onely to the Precincts of the Close of the *Abbey*, and not to all the possessions of it. *Charge*. A man covenants to free a purchasor of all charges upon the land, this extends to a possibility of a term, which yet is no title or right, *ante hac usitate*, &c. Note in a subjects case these words, Will reach higher then in the Kings Case.

20 Eliz. Dyer  
362. no. lib.  
entrey 384.Pas. 28. Eliz.  
Case *Farrer*.21 E. 4. 52. lib.  
entrys 152.Mich. 13. Eliz.  
b. 207. rot.

1330.

9 Eliz. upon  
*Bendolf*.9 Eliz. per  
*Gavvdy* and  
Dyer.

*Circiter*. Is an incertayne time, and therefore in case where certainty is required, it is ill in pleadings, &c. and therefore *Circiter* 21 of Feb. may be as well be afore the day as after. *Citra, infra, Circa festum, sic ante festum*. These are all before the *Vigils* of the Feast, or in the *Vigils* at the least. A bond is made to stand to the arbitrement of I. S. to be made *ante nonum diem* of October, &c. The arbitrement is well made any time before midnight of the 8. day. *Citra*, 50 yeers last past, was rejected because unusuall, for the pleading is *infra* 50 yeers, &c. Condition of a bond is to pay so much mony by *Michaelmas* next it shall be before the day. *Competent*. as a competent *Benefice*, the mea-

meaning of this word is to be fount out by the annuity is to cease when such a Benefice is provided, and not in reference to the persons quality to be provided for, as if the annuity was forty shillings *per annum* to the Chaplain of the King, till provided, &c. Of a competent Benefice ten marks *per annum est*, adjudged competent in this case. *Consueta*. It is taken for a thing anciently, used albeit now at the *Molins*: present it is discontinued &c.

*Discretion* comes of *spiro iudico*, so Jurors put themselves in discretion of the Court, that is, upon the judgement of the Court in point of Law, it is taken for that act of the Judge arises in case of extremity of Law, and amounts to as much as if he had said that the Judge shall doe according to the Law and right reason; *Vide Pl. 83.* when it's said in Statutes, &c. that hee shall doe according to his discretion, See 27. *H. 8. 25. Fitz James* discretion mentioned, see 10. *H. 7. 29.* where it's taken *pro concilio.*

*Donque, then tunc* a license is made to goe over sea, proviso if he resort to fugitives, *then to cease* he breaks the Covenant, *then here is expounded*, for thence

2 Eliz. Dyer  
177.  
P.5. Cœr. Case  
Mason.

Plo. 192.  
F.n.b. 194.

8 Report Case  
Paxall.  
Register 125.

9 Eliz.

5 Report Case  
Mallery.

Eliz. 20. Iac. in  
b.R. cited. per  
Dod. I.

forth and not *ab innitio*, action upon the case, consideration is *quod tunc* he deliver a horse, &c. It's well done any time of the day after.

*Demise* signifies not onely the originall Lease which is made to the Lessee, but the relinquishment, grant or assignement of any thing, as in the Writ, in the *per*, it is said, *cui A*, this demise in case of fee simple granted.

*Et*, This conjunction in our Law, hath somtimes the sence of *vel*, & *sic è converso* horrible and enormous taken for or enormous. A bond is upon condition, if he pay part it shall be void, and also upon condition, that if hee suffer the Obligee to enjoy such a Mannour that the bond shall be void, the performance of either of these causes will avoid the bond, which prove *and* or & is taken in the sense of or, A rent is reserved to the Lessor, or his heirs, this rent is good to himselfe, and or is not disjunctive here. A man devises Land to G. S. and if hee die before 21 yeers of age, or without issue, to remain to a stranger, he dies before 21. but hath issue, adjudge this word *or*, shall be taken for *and*, and both must fail, otherwise he shall

Shall have no benefit of the remainder in this case, See *Plo. Manxels case*, fol. 5. *Bene 4 Report, Ognels case*, and 10 *Report, Vaughan's case*, cited in *Legat's case, Instituti.* 96. 8 *Report Pexals Case.*

*Expiration*, is properly by efflux of time *Plo. 198.* and differs a fine *rei.*

*Esteant*, or being. In these words will 27 H.8.17.19<sup>4</sup> extend to future times, and are not tyed always to the present tense. A man de- 16 Eliz. *Dyer* viseth his land shal go to the next of bloud 333. (*being males*) It shall be construed in the future tense, that shall be males, &c.

*Ex actionibus*, is all things in action, 11 H.4.7<sup>4</sup> and as large as Demands in a manner.

*Eſt & fuit*. Sometimes taken in the 8 H.6.27<sup>4</sup> same sense, as if mayntenance be layed in a 10 H.7.27<sup>4</sup> plea, *quod fuit*, betwixt such and such, in law its taken for which is.

*Eviction*. A man is bound, the obligee shall enjoy such a house, or, &c. without 5 *Report tem-* eviction. Pursuit in Chancery and a de- pore Eliz. cree thereupon, &c. is no such eviction to forfeit his bond.

*House*. A remaynder is limited to the 16 Eliz. house. In law the family, and the chiefe *Dyer* 333. and most worthy or eldest of it, is meant.

*Horrible and enormous*. *Ictus unus non*

Register 125. dicitur enormous, if mayme, &c. is not by  
F.n.b.135. it. Vide Stat. W. 2. cap. 29. hath the word.

F.n.b.198. Incontinenter & immediate, is as much  
Institutes 1. as eodem tempore. And therefore lit. 702.  
369. says if disseisin be and a scoff made Incon-  
tinenter garr. created upon that is garr.  
by disseisin. See 6 Report 11, there its ex-  
pounded by reasonable time. A bond is

39 H.6.10.  
Institute 1.  
208.

conditioned to pay plantiffe, and no time  
limited, the law says it shall be inconti-  
nently payed, now this in legall construc-  
tion is inconvenient time, and so it seems  
shall it be, though the party himself sayes  
in expresse words, hee will pay the money  
incontinently or presently. If no heire be  
at the time of discent of land, but one is  
born with in an houre after, this is not pre-  
sently as to make a discent to take away  
an entry and yet hee shall have it as heire.

A man takes base money in payment and  
discovers this immediatly, yet he cannot  
refuse this, having once accepted of it. It is  
said where a deed is absolute, and a defea-  
sans is delivred immediate, it is good and  
all one as if it were within the deed it self.

Covē is to deliver cloth & that immediatly  
upon the delivery of such cloth to pay him  
10 pounnd, the cloth is delivered at noon, the  
other

5 Report Case  
Wade.

30 Aff. 11.

18 E.4.30.

21 E.4.53.

per Sylgard.

other hath all the day remayning to pay the money. Immediatly sometime is by good construction, observing all incidents to such an act, &c. to be done. See Stat. *Winchest.* & 27 Eliz. of immediate notice, and action *Burnel* the same sence *ut hic.*

<sup>7</sup> Report  
*Kens Case.*

*Infra quatuor Maria.* is taken to be within the Realm of *England*, and doth not fetch in or intend *Scotland*, &c.

*Institutes.*  
107.

*Inhabitant, Resident, Commorant, Conversant*, the genuine sence of these words are very necessary to be known, by reason they are frequently used in severall statutes, as in that of election of Burgesses to the Parliament, 1 H. 5. 23. H. 6. and in the statute of *Regues*, &c. The originall in the Greek is *ενδιατηπικω*, which is, *properantem Commorari, apud aliquem morari*, and in *Buckleys Case*, *Plo.* the word in the statute *Resident* is in the Record and pleading of it in Latin, translated *Commorans, vel Conversans*, the first comes of *morando*, which signifies dwelling for a time, or to sojourne, and it is rather loytering then habitation. *Conversans* is to haunt much in a place, the originall imports to abide for a time *versari in acie*, and yet note the word

word there *Resident* is in the record *Com-  
morans* and *Conversans*. The word *Resi-  
dent* comes of *residio*, *resideo*, and imports  
as much as to light or to sit down as a bird  
after her flight, which may aptly be ap-  
plied to Rogues, but what time will make  
*resident* is darke yet by these expositions,  
but it seemes a small time will do it, in  
*French* its neerer our law sence, *assis lo-  
catur idem cum assiduitas*, which inti-  
mates that such a one will continue in such  
a place for the time to come, then that he  
hath been long there before. The condi-  
tion of a lease is, that the lessee shall inhabit  
and be resident upon the land during the  
terme, if these words during the terme  
had not been in, it is adjudged that the a-  
biding a small time there will serve to per-  
form the condition of abiding and resi-  
dent. A man hath his family upon a house  
or no family, but occupies lands in Dale,  
the first is said a *Resiant*, the second an  
*Inhabitant* in our Law. Suit reall which  
Report Case was better *royall*, is said due of the body of  
Jefferey. A Charter is granted

Plo. Case.  
Colthirst.

Ibid.

Report Case was better *royall*, is said due of the body of  
Jefferey.

E. 3. 23.

granted that Inhabitants shall have franchises, it shall not be extended to fugitives, as this book saith, &c. See *Fitz-Herbert* *N.B. 160.* A saith that a man shall not be distreined to come to a leet where he is not demurrant and conversant, if a house is in two Leets, he shall attend that where his bed is, for there hee shall be deemed most conversant. *Vide Fitz. N.B. ibid.* in the Writ for discharging a man to come to a Leet it is, *illi qui moram non fecerint*, shall not be put *in juratis*, &c. by these reasons and authorities you shall better conceive the right sence of these kinde of words, about which fuch various opinions have been in Courts of Record and Sessions in the Country, &c.

*In apud ad, de, &c.* all these have the same sence in severall cases. Trespass upon the statute of 6 R.2. for intrusion into the Mannor of *D. apud D.* it is as much as in *D.* and the *venire facias* shall be of the Town of *D.* yet the Indictment was for an affray *apud Ecclesiam de D.* and it was doubted if good, but it should be *in Ecclesia*, otherwise by the word *apud* it may be without the walls, and the sta- *P.36. Eliz.* *ute is penall and the word in the Church,* *Capt. Knevit.*

&c. A grant of a rent charg *percipiendum*  
*in Manerio de Dale*, and *apud Manerium*  
 and both good. *Assumpſit* was to deliver  
 goods in such a Port, and in pleading hee  
 says, *ad t' ale portum*, its ſufficient, ſo where  
 its ſaid ſuch a thing ſhall be done *in festo*,  
 its as much as the first day of this eaſt, and  
 ſhall not be deferred till the *etas* of it. A  
 Writ is directed *Coronatoribus in Com.* It  
 is as good as *de Com.* And ſo abjura-  
 tion pleaded *coram Coronatoribus in Com.*  
 was holden good contrary to the opinion  
 which *ex ſubito* hath beene taken by  
 ſome,

Dyer 185. Interest, any profit as Common, &c. is  
 interest.

34 H. 67. 8. *In manibus*, a man devife all his tene-  
 ments *in manibus suis*, and hath a reverſi-  
 on upon an estate for life, this ſhall paſſe  
 for the word denotes onely a thing in my  
 ſubjeſtion and power.

Dyer 291. *Inde* imports all things ſpoken of be-  
 fore as thus, *Si iudicium iude redditum fit*,  
 &c. this is to be taken upon the whole re-  
 cord, &c.

18 Eliz. Dyer 349. *In rerum natura*, hee which is dead in  
 law, as Monk, &c. ſo he which is out of the  
 Country where, &c. is in law ſaid, not *in*  
*rerum natura*.

*Ipsa*

*Ipsa factio.* Such a thing shall be, as Stat. E. 3. hee which draws a dagger, &c. shall be excomenge *ipso facto*, it is doubted if it shall be without sentence or proof, but the statute of *Henry the eighth*, which sayes, hee that takes a second Bene-  
fice, &c. shall be *ipso facto*, or *ipso iure* <sup>4 Report 79.</sup> *privatus* of the first, this is without <sup>75.</sup> sentence.

*Juxta.* The thing may be twenty foot remote from the place to which its said *Juxta. Juxta Hull.* This imports the place is another then *Hull*, and remote <sup>19 Aff. 6.</sup> <sup>14 Aff. 8.</sup> <sup>45 E. 3. 3.</sup> from it.

*Infra*, is all one with *Ante*. As to pay <sup>21 E. 4. 63.</sup> money *infra Festum Nativitatis Domini*, is before it.

*Maereneum.* Is this timber which hath bin part of a house, or els *aptum ad domum*, seems framed for such a purpose, yet see *ib.* Register 94. 96. It is used for timber in other building. In the Dictionaries it is written *mereneum*, & est idem *quod tignum*, timber to build with. In old French *Mareme* Latin *Ma-* <sup>Institute 3. 97.</sup> *reneum ligrum adificatorium*, and its said <sup>Institute 4. 307.</sup> a Norman word.

*Mensiall servant.* Is hee which is em-  
ployed in the house for to serve the person <sup>22 H. 6. 12.</sup> of

of a man. So old book entries, *fol. 434.* of *servus familiaris* for menial servant.

*Nuper est expound le jour aut le mort de Auntestor quod nota*, no long time is required to this.

*Pacatione.* An old word used for a release, as where its said ten pound was payed in *Pacatione* of a hundred pound, *Vide old Magna Charta 153.* the word for payed.

*Prætextu.* Is used in law for reall and good matter and of equall force with *virtute cuius, or ratione cuius.*

*Prima & proxima.* Where it is said the jurour who hath lands neerest to twenty pound, &c. Is not intended nineteen pound, but the neerest to twenty pound till it descend to forty shillings, I grant one twenty pound at the birth of my first son, and I have a son at the time of this grant hee shall not have the twenty pound till the birth of another son.

*Pacifice.* I am bound you shall enjoy acre B. *pacifice, &c.* albeit hee be distreined for issues lost, this is no breach of this bond.

*Pro.* The sense of this word is not to have one thing for another, but the thing it

F.n.b. 197.

27 E. 3. 16.

F.n.b. 93. no. 109.  
entries 2. &

9 Report 56.  
21 H. 7 38.

12 Eliz. per  
Harperum.

30 H. 8.  
Dyer 43.

it self sometimes, as if I promise to content you, *pro granagio*, this is taken that I shall Dyer 352. pay the very granage it selfe, and not money for it, &c.

*Forfeiture* of all a man may, this in law Institutes 391. is land, goods, and body to be imprisoned, when such expression is in a statute, &c.

*Puer.* Comprise female as well as male, *maxime* in the Dative case plurall, Dyer 337. 30 *Aff. 47. 9 Report 72.*

*Nos. Vos. Is stylus aulicus, sed non antiquus*, and intimates, quando Princeps loquitur *ex curia consilio*, and it is not to be found in all the Scripture given to any *nesin*, 272. Prince or single man, and upon like reason it seems, Bishops used it, and the Chief Justice of the Bench, *coram vobis & sociis*, but because it was given to a Sheriffe in a *Writ*, thus *principite I. S. &c.* the *Writ* was abated.

*Permittere.* Imports meer passive, and he that is bound *permittere* onely need do nothing, and violence by him is to have advantage of a condition by which a breach is, will excuse as if the bond is that hee shall not permit A to inhabit in such a house, and the Obligee him put in, &c. he who is so bound becomes a bankrupt, by which

1. A. T. 72

2. 11. 11. 11

3. 11. 11. 11

4. 11. 11. 11

5. 11. 11. 11

6. 11. 11. 11

7. 11. 11. 11

With the house is sold, and another is put in, see whether this breaks the covenant when hee hath done an act by which in law the breach follows, that the other cannot dwell there. *Si lex permittat*, is if by any licence the thing can be done, or dispensation after then it shall be done, &c.

**F.n.b.41.**  
**3 Institut.182.** *Res* is a good word for goods and chattels, and goes to corporate and incorporate things.

**25 E.4.15.** *Sufficienter*, a man is bound to serve in Normandy, *Sufficienter*, is with armour, &c.

*Sure estate*, a man is bound to make a sure estate by force of this word hee shall free it of dower, and yet the estate may be sure without it.

*Similiter pro ut*, &c. Where Jury findes the homage did *similiter* or *pro ut*, the Defendant hath pleaded, &c. that goes to time and place, and other circumstances as well as to the matter it selfe.  
*Trin.33.Eliz.Case,Barnes.*

*Predict*. This word hath various effectual operations in our Law, by some books it is said of as great force and efficacie, as if the words themselves to which it refers had been expressed at large. A *Cessavit* is

is brought and declares of a tenour by 35 H.6.31.  
 homage, Rent, &c. *Et quod de predictis*  
*serviciis Cessavit, &c.* This refers onely  
 to that service, of which in Law properly  
 cesser may be. *Predictis* not necessary where  
 the matter appears, though it would have  
 made it more cleer. It will supply an a-  
 verment to reconcile differences in the  
 Record as *Codred* is in the beginning of  
 the Plea, and after it is *Cotred predict*,  
 this helps the varience. An Indenture is  
 said, dated 23, *December*, and after it is  
 said, *per indentured predict. datum. 23.*  
*November*, the mistake is helped by the  
 word *predict*. The quality of a thing  
 shall be well helpt by this, and inforced,  
 as where it is mentioned that land was  
 conveyed which he had by discent from  
 his father, mention after, *de terris predictis*  
 will include all this. I surrenders  
 copihold to the use of A. for life, the re-  
 mainder to I.S. for life, the remainer to the  
 heirs *predicti Johan.* & resolved it shall be  
 the heirs of the later I. S. the purchasor, *pasch. 23. Eliz.*  
 and not of himselfe, Assisse is against M.  
 the Abbot de H. and the pone was pre-  
 dicted *Abatissam*, with one more, and the  
 opinion that it shall abate, *vid. 8. E. 3.* *26 Aff. II.*  
 64. *P a-*

10 H.7.5.8.  
 Report 57.

Trin.33. Eliz.  
 Case Graye.

*paratus, paratus, respondere*, within the Statute W. 2. &c. he shall be said *paratus* who comes at the time appointed by the Law, and not presently, as where a remainder depends upon a remainder for life, here he is in Law said *paratus*, if hee come after the others which are meane and have made default.

*Expositio quorundam verborum & sententiarum in devises of Land.* I. S. hath Lands in D. and also Rents, Court-Leets, dismes and common, and doth devise to his eldest Son divers Lands by *name*, and then devises to his yongest Son all his other Lands purchased free hold and copy-hold, and it was ruled because in the forepart of the will, all his Lands were devised to the eldest, the rents, tithes, leets, &c. shall by

Trin. 9. Eliz.  
per Dyer.  
Walsh & Gars-  
dy, I.

In 20 Iac. in b.  
Roy case, Scat-  
tergood.

22 Iac. Case  
Fox.

19 Eliz.

those words passe to the youngest son. A man devises all his living to I. S. and and judge his reversion shall passe. *Item*, I will and intend to devise my Land to A, this is a present devise of the Land *per opem curiae*. A man devises the fee simple of his Land to his wife, and after her decease to his son *Thomas*, &c. shee takes for life the remainder to the son for life, the remainder in fee to the wife, but it is not ex-  
ecuted

ecuted to make a title, her husband to be Tenant by the courtesie.

*Et Cetera, &c.* This will help in many cases in Law. In an action of trespass, *quare bona, &c.* and declare of a bale of wood, and ruled it is not good because in the singular number, and the writ in the plurall, but if this expression, &c. had been added, it would have made it good.

Hill. 13.  
H. I. Kebles

A Recognizance *in atteint* is, that if hee doe such and such things, *quod tunc, &c. per, &c.* by these particles, the condition of the Recognizance shall be perfected, which otherwise is not. Indictment is certified up to be *capta*, before such Justices *ad pacem, nec non ad diversas fellowias & alia malafacta, &c.* &c. supplies the other particulars of the commission, but in the same case it was ruled, that such an Indictment certified *capta coram, Justiciaris ad pacem, &c.* was not good, and doubted if it were certified to be presented *per sacramentum proborum & legalium hominum, &c.* and doth not put down the names of the Grand Jurie if it shall be good. When a record is sent up in a Writ of error, out of an inferiour Court, shewes the *venire facias* was awarded, *ad recognoscendum,*

Dyer.

Trin. 11.  
Car. b. Roy.

Trin. 11.  
Car. Case.  
Hambleton in  
b. Roy.  
At the Assize  
Ebor. 9. Car. by  
Davenport  
Chiche Baron.

*noscendum, &c.* and sufficient without shewing the particular issue, an &c. added to a prescription made it ill, and the plaintiff *non suted, super inde.*

Trin. 18. Jac. in  
Comm. b.  
Case Loudor.  
Vide Chapter  
of Southwell.

*Commodities, profits, emoluments,* these words in a deed added to the land or Man-  
nor sold, extend to such things which yield naturall profit, which an advouson doth not, and therefore it was resolved it ex-  
tends not to an Advow appendant, &c. to passe that without expresse words.

7 E. 3. 24.  
28 E. 3. 11.

*Souvereigne, In Law* it is no more but the supreme of a house, or a Town, &c. So an Abbot is Souvereigne of the house, and *Claydon* the Marshall of the house-  
hold, is termed there *Souvereigne*, in respect of the Gaoler and the command of such an one obeyed, shall excuse the subject or inferiour. Souvereigne of the Town shall pursue fellons, &c. this is the chiche officer be it Constable, or &c.

Register 44.  
Britton 19.  
W. 2 cap. 40.

*Subditus* is one who is subject to the ordinary jurisdiction of another, as those under the Diocesan are said *Subditi* in the writ of consultation, and the word is used also for any neighbour or inferiour, within the distresse of such a Court, but in a strict sense it refers to the Prince, so *Boden, sub-  
ditus*

*datus plurium principum quisque esse non potest.* See Dyer 360. Its said that one of Ireland is subject of Ireland, and not of England, *quod nota:* and see *Calvins case*, 7 Report.

*Miniments.* A word used in Conveyances, it includes all manner of Evidences 35 H.6.37; whatsoever, *quasi Muniments.* Old lib. Entryes 335. There it is said forger of false deed and Muniments.

49 *Fictio juris neminem ledere debet.* But ayde much it may, and this is seen in all matters where the Law works by relation and division of an instant, which are fictions in law. A Constable takes 11 H.4.12 one which had struck another, and then sets him at liberty, the party stricken dyes of this stroake, this is felony *ab initio*, but not to the prejudice of the Constable who suffered this escape. A feoffment is upon condition that he shall re-infeoff him, he grants a rent-charge, and the Grantee brings a Writ of annuity, now it is an annuity by relation *ab initio*, betwixt the 3 Report Case Grantor and Grantee, but not to defeat *Butler and S.* the condition broken, *quoad* the Feoffor. 30 E.3.17. A fine is levied, *sur render* the Conusee by fiction in law hath seisin in an instant to

2 Report Case  
Lord Cram-  
well.

22 H.6.  
Dyer 33.  
33 Eliz.

Dyer 318.  
40 E.3.6.

11 Eliz.  
Dyer 281.  
Doct. & Stud.

make this renderback good, but to no other purpose to the prejudice of the conusor, for his wife shall have no Dower, nor shall this land be subject to any statute, &c. in which this Conusee was bound.

50 *Fortior est obligatio partis quam legis.* A man is bound by obligation to pay his rent, he ought to seek the Lessor to pay him. A man is bound in a bond to repaire a house, hee shall do this against tempest, &c. and so also though it be ruinous at the time of the lease, which otherwise hee is not bound to doe. If the Lessor Covenant the Lessee shall enjoy the land demised pacifice, this extends to those, do interrupt him by wrong, whereby the word *demise* he is not bound.

51 *Fortior est provisio legis quam partis.* The statute of Gloucester which prohibits a man do no waste, it is expounded that he shall not permit waste, but if I be bound that I shall not do waste, my bond is not forfeited by waste permissive.

52 *Fortior est dispositio legis quam hominis.* A man hath *interesse termini*, hee cannot this surrender, but if he take a new Lease *in praesenti*, this is a surrender of the old *interesse termini*. And upon this reason

Son it is that conditions in law are so <sup>to Report 67.</sup> strong, as expresse conditions. <sup>Litt. 378.</sup>

53 *Fortior & melior est provisio Legis quam hominis.* Parceners, by the law are to have equall portions of lands tayle and fee, now if one of them agree to take all her part of the tayled lands, she may suffer by this partition. A man is seized of three manors, of equall value, and takes a wife, and shee takes one entire manour for her dower, which is charged with the rent shee shall hold it charged, otherwise is it if she had recovered her dower, and had had a third part of each assigned to her.

<sup>1</sup> *Institu. 179.*

54 *Fundamento distracto cadit opus, à quare non admisit,* is awarded, and afterward the originall record is removed by a writ of Errour, now the other fails though it be disadvantage to the King, who cannot now proceed for the contempt but by Green, if hee is attainted once for the contempt, the reversal of the first judgement afterward shall not aid him to avoid the contempt *ut supra*, an exigent <sup>M. 26 E.3.</sup> goes out for felonie, and after a pardon of placito <sup>25. fol.</sup> ancient date to the exigent comes, and all <sup>75.</sup> things by the Law required are done, the <sup>43 E.3. 18.</sup>

P. 23. Eliz.  
6 Report 13.

20 Aff. 7.

2 Report 33.  
Case Doding-  
ton.

22 Aff. 73.

chattels are saved, an excommengement is for contempt of a letter missive from the high commission, the contempt is pardoned, the excommengement is also *exconsequenti*: Execution is sued upon a Statute, and then the Conusee makes a defeasance of the Statute, upon payment of twenty pounds, if it is paid, the execution shall be defeated, as well as the Statute. *vide. 43. E. 3. 18.*

55 \* *Generale nihil certum ponit*, and is rejected in Law. A man is bound to devise all his lands in the tennor of I. S. in the Towne of D. the obliger may say, hee hath no lands there, so a man is bound to be *non suited* in all actions that he hath in the Common-pleas, hee may say he hath none there: otherwise if the condition be particular, as to be nonsuted in a *formdon*, &c. Inditement is thus, that A. is a malefactor or a common thiefe, it's not good.

56 *Generall words where they will helpe particular infirmities.* As *Scire facias* is a gainst two severall tenants, the Sheriffe returnes *Scire feci*, the two modo & forma pro ut breve exigit, now this which was joyned in the beginning of the

the return is now severall and good by the generell words *modo & forma, &c.* So where a Sheriff returns that *virtute brevis* <sup>2 H.4.13.</sup> he hath done such a thing , and in the sequel of his return are many imperfections, they shall be helped all by these generall words, *virtute brevis* : see to this purpose <sup>34 H.6.</sup> of these words *contra formam Statuti*, & what imperfections will be aided by these words; so by the words *secundum formam Statuti*, where it's said they shall have the force as if the very words of the Statute, &c. had been punctually expressed. An information is upon the Statute of buying titles, and there is a mistake in the record of the day of holding the Parliament, or in the ending of it, but because the words *contra formam Statuti* were in the conclusion, that was aided in the misrepetition of the date, or day of holding the Parliament, which was vain.

57 Generall words in grants where they shall be restrained by particular words in the same clause, & contray. A man hath a manor in O, and other lands not parcell of the manner, and suffer a Recoverie of all, and declare by Indenture that the use of all his lands in O, shall be to the use

Stamford 8 1.

5 Report 7.  
Dyer 13.  
Eliz.

11 H.4. 4 Case  
Barns and Hill  
Michel.7.Car.  
in b.le Roy.

8 Report. 11  
Case Carter.

of A, this shal not be of the Mannor which was particularly mentioned before. A. acknowledges a fine of the Mannor of D. with an advouson, and regrants the Mannor *cum pertinentiis*, the advouson shall not passe in this case. A Release to Jo. S, executor I.D. all actions now by this restrictive word executor no impediment shal be, but that this release shall have an operation upon all the capacities of I.S. The Obligee grants to the obligor, that he shall bee discharged of the bond, and if he is sued upon it, that hee shall plead this as a Release: It is a release presently without expecting Suit, &c.

58 *Generale descendens in particula re*  
*five Specie de, shall be ruled by that speciall.*

8 Report Case Altham. A man grants a rent in the Mannor of D. *percipiendum* in 100 Acres, parcell of the same Mannor, or *disstringendum* in 100 Acres, this rent is charged upon this 100 Acres onely, so a man releaseth all demands, *nec non title* of dower in the Lands of W. this curbs the generall word demands, and ties it to the Lands of W. onely. I. H, grants his Mannor S. in A. and B. where this extends also into C. nothing of the Mannor in C. shall passe.

A

Temp. E.I.  
F. title grants  
per Barkley.  
Judg. 13 Car.  
19 H.6. per  
Ascue.

21 H.7.32.

8 Report Case  
Altham.Dyer 261.  
9 Eli.9 Eliz.  
Dyer 261.

A man devises all his Land in D. and the Hamblet of I, this excludes that Lands in other Hamblets then I, shall passe though within the same Town, but note if the Speciall is first put down in the deed and generall word after that the Law is contrary, as when one is made Deputy Steward to take a surrender absolute, & *ulterius* Trin. 26. Eliz. *facere omnia quæ ad officinm ejus in hac inter Adams & parte pertinent facienda*, this enlarges his Fost. r. power, so that this Steward now may take a surrender conditionall, &c. *Vide 7 E. 3. 10. bene* upon this rule.

59 *Hee that needs most let him blow the cole.* Upon this reason hee which is to have benefit shall do the first act. *Vide antea*, title *Att*, so where request is to be made, hee who is to have availe shall make it, &c. Detinue is brought of a deed of Release, the defendant garnish B, to whom this was made, &c. and upon shewing the deed, the seale was debrused, and the Plaintiffe would have had damages, and ruled no, for he hath no reason to complain of the debruser, &c. but hee to whom it was made, and let him blow the coal if he will.

29 E. 3. 31.

60 *Integra lex separat & individua.*

51 H.7.29.

4 E.2. F. Tittle  
Judgment 229.21 E.3.20.  
Dyer 291.Dyer 13.  
& 233.  
Plo. Case.  
Browning. & B.21 H.6.10.  
Plo.30.

E.4.1.

A Charter may be allowed for part, because it hath beene allowed in Eyre, and disallowed *pro residuo*. In debt upon a bond against two, the one acknowledgeth the deed, the other pleads in abatement, and it was awarded the Plaintiff shall recover a moyty. So a judgment may be reversed for part as a fine, for that it was ancient Demesne was reversed for that part and stood good for the rest. And note there is a speciall Writ of Errour to remove part of the Record, &c.

61 *Idem taken pro Simile*. So a limitation *ad eundem usum* was taken *pro tali usu*. Obligation is to pay 20 shillings at Michael. and the yeer following 20 shillings at the same Feast. It is taken for the like feast. *Vide 5 H.7.39.40.*

Inconveniencie, see afterward here fol.63

62 *Indefinitum supplet locum universalis*. A man is bound, his Feoffees shall grant a Rent, or make a feoffment, all ought to joyne in this grant. A man gives *bona sua* in D. Its all one as if he had said, *omnia bona dies, datus est partibus praeditis*, its all one as if he had said *omnibus partibus*, a Writ is directed *Coronatoribus Lincoln*. Its all one as if he had said *omni-*

*bus*,

bus, and is not intended 2 or 3. The statute of *Winchester* is that the hundred shall answer for the body of the offenders, this <sup>11 H.7.11.</sup> is taken for all the offenders, and the ta- <sup>Plo.75.</sup>  
 king of two or more will not serve the turn. See for the pleading of this Case onely four or five of the Inhabitants are to be named in *Certeine, &c.* A tenant <sup>7 Report 7.</sup> pleads that hee is no tenant of the Free- <sup>Case Milborn.</sup>  
 hold, and issue is joyned upon this, and its found tenant but for part, and of the resi-  
 due not, this is against the pleador. See <sup>2 R.3.17.18. 6 H.7.15. 1 E.5.5. 27 E.3.</sup>  
 21. This generall rule hath severall excep- <sup>Mich.10. Car.</sup>  
 tions and restrictions. As in case the non <sup>inter Lee &</sup> *Exceptions.* <sup>Smathers.</sup>  
 observance of it makes for advance of Ju-  
 stice, as *tales, quales, &c.* shall issue in <sup>10 Report</sup> favour of tryals, though onely one of the *Denbawd case.*  
 principall pannell did appear. See <sup>12 H.4</sup>  
<sup>tit: Certificate of Assize 4.</sup> And *Hobs Case, Institute 1.* Upon the same reason, *Vt res magis valeat. R.2.* granted to the Ab-  
 bot of *W.* that he and his successors shall be Collectors of Dismes granted *per Cle-  
 rum Angliae*, this shall be taken for that part of the Clergie use, to grant such <sup>8 Report 56.</sup> dismes which is the Clergy of the severall <sup>4 Report Case</sup>  
<sup>Pro- of corporis,</sup>

Provinces. Prescription is that the Major shall be chosen by the Comminalty, by usage this shall be restrained to the principall of the Comminalty, &c. A Common is claymed to a Mannor, it is by intendment all times of the yeere, but yet its not so strong as if expressed all times of yeer. See 30 H.6.2. 8 Report 91. 21 E.4.44 Dyer 186. 21 E.4.44.5.6.

59 *Ignorantia non excusat*, nor folly, but a man shall have prejudice by this much. The Clerk mistakes, *debet pro detinet* in a Writ, Ignorance is no excuse. If a man can read and will accept the declaration of the contents of a deed by one who declares it in a different manner, from that the truth in the deed is, *This shall not ayde him*, but he is bound by it.

60 *Inter aquales melior est conditio possidentis*. Upon this reason 'tis that hee that hath an estate by wrong, shall hold against all others who have no title. If ten Mannors are conveyed to severall persons by one and the same Deed which of these happen to get the Deed may detaine it, where two severall persons have each of them power distinct to make a lease of such

Trin. 8. Car.  
Case Bullock.

Lit. 261.  
Briton 62.

22 E.4.21.  
2 Report Case  
Thorowgood.

4 H.7.10.

Such Lands which of them leased it first shall stand. A Lord allows six Chaplains by his Letters Testimoniall all are presented to six severall Benefices, Pluralities the three first promoted shall stand, Two Attourneys reteyned conjunctem & divisem, the plea of him first pleads shall stand.

4 Report Case  
Drury.

12 H.7.9.

A Serjeant at Law brings an Action against an officer of the Kings Bench, the Common Place shall have the priviledge.

See 48 E.3.20.21. 13 E. 3. F. Assize 91.

Where it is said that possession by halfe a day is not sufficient to gaine a freehold against him is a tort fesor, &c. and so titles equall.

61 Iteration of a small offence will make it amount to a great one. As if a Gaoler permit severall negligent escapes, this will grow to be in judgment of law as much and as high a crime as a voluntary escape.

39 H.6.33.

62 Injuria propria non cadet in beneficium facientis. A water runs upon the land of I.S. he stops it, by which my land is surrounded, I may enter his Close and debruse that which stops the water course. Lessee for yeers puls downe his house, hee shall not have the tymber was in it to redifie

8 E.4.52.

Report Case  
Herlaken.

Report Case  
Edm. Corbet.

E. 4. 28.

34 H. 6. 11.

Institutes 4.

13.

18 E. 4. 6.

edifie it, as he shall when its blown down: the same law is if hee cut downe trees hee hath lost his speciall interest in them for shade, &c. A man devises land to A. till a hundred pound levied and dyes, the heir enters & continues by four yeers in which by computation the money might have been levied, the Devisee shall have foure yeers more against him is heire. In a *præcipe quod reddat*, the tenant is essoigned at the *Grand Caste*, where he ought not to be this shall not turne to a discontinuance. One takes my goods by wrong, and them offers to an Image, my property is gone, but if afterward these goods come again to the possession of the trespassor, I may cease them out of his hands.

63 *In præsentia majoris cessat potestas minoris.* A Lord of the Parliament makes a proxy, and after comes himselfe into the house of Lords, though hee says nothing, *the power of the Proxy ceaseth*.

64 *Laches may prejudice but shall not ayde any man.* Tenant in tayle sells a hundred Oakes for twenty pound, the vendee delayes the taking of them till the vendor die, he hath lost them for ever. A man brings a *Formdon* against two, the one pleads

pleads, *ne dona pas*, which is fould against him, the other pleads Basterdy, if the demandant in this case do not pray his judgment against the first, till the other issue tryed against him which findes him basterd, he shall by this neglect lose the other moyty which he might have had. 15 E.4.27.  
 custome of a Towne is after Corn and Hay, severed and carried away in such a field to put in Hogs, &c. if one will permit his corn to continue there where he had sufficient time equall to his neighbours, it is at his owne perill, and the other may put in 21 E.4.41.  
*their beasts, &c.* as if the Corn had been taken away. F. barr. 205.  
 A man hath five load of hay to be taken yeerly in such a Medow, if the grantee do not take their loads of hay one yeere, it is lost *for ever*, and he cannot take it the next yeer, for then perhaps he should take all the hay in that place which was 27 H.6.10.  
 not reasonable, and might put the owner without hay for that yeer.

65. *The Law avoyds Circuit of action.*

Upon this reason tis that where a Lessor Covenants to repair and doth not, the lessee shall not be put to a suit upon the Covenant, but shall detaine so much money out of his Rent, &c. annuity is granted to 12 H.8.1.

**8 H. 6. 23.** A. for which he covenants and grants to be with the Grantor in every place in the County, &c. if he fail to be with him, &c. he may plead it in barre of the Annuity, and shall not be enforced to an action of Covenant.

**6 E. 3. 41.** 66 *The Law yields to necessity.* Upon this reason it is that in a Writ averment that they are the same lands shall not be admitted, because hee may have another

**5 Report Case of Amend- ments.** Writ, but in a fine upon release, it shall rather then the land shall be lost, and the ad-

**7 Report Ca- ses of discont. scilicet.** vantage of the fine annul. If there be not sufficient to serve of a Jury, the tenant to

**38 E. 3. 25.** one of the parties shall be sworne rather then fail of the tryall. The husband discon-

tinue an acre parcell, &c. With the Ad-

**17 E. 3. 4 5.** vowson, the Alienee presents and dyes, the heir grants the Advowson now in so much

**13 H. 8. 16.** that the wife cannot recover this Advow- son, by recovery of the acre, because of

**6 E. 4. 7.** the severance of this from the acre by the grant he shall present without recovery of the advowson, as if it had bin severed at the

first. One cuts an Oke which falls upon the land of another, now if he could not pre-

vent this, he shall be excused to enter into this land and take it away. The same law

is if beasts be driven by the high-way, and they run *into* the Corn, he may enter into the Corn to drive them out. In a *per quæ* <sup>10 E. 4.7.</sup> servitia against a Prioresse, for that she is <sup>22 E. 4.8.</sup> incloystered shee shall attorne by her attorney. A man gives me leave to come to his house, and *after discharges* me again, <sup>43 E. 3.8.</sup> if I continue there *afterward* *I am a trespassor*, but if the countermand was in time of a tempest, the law alters, and they may stay there untill it be over, *sed nota differentiam inter necesse & necessarium*, though in Latine as Davis thinks, *fol. 12.* they are used promiscuously, vouching the sentence of a Roman Senator, *Nihil magis justum quam necessarium, & Trollop.* <sup>6 Report Case per Coke.</sup>

67 The Law will suffer a mischiefrather than an inconvenience. This word Incontinence so much used in our Law hath the force of against reason *scilicet*, artificial reason perfected by use and experience termed *summa ratio*. And it is in truth when some maxime of the Law is shaken. A man privileged in some Court is sued in London, and the matter is actionable nowhere but there in London, yet by his privilege the cause shall surcease there. This the reason <sup>Lit. 231. 138.</sup> <sup>Institutes 152.</sup> <sup>38 H. 6. 30.</sup> that

that a Fem covert or Infant shall not avoid  
their fines at full age, or after the husbands  
death. See title Voucher in *Fitz.* 81.  
13 H.4.2. Matter upon like reason.

27 E.3.79.

7 H.7.18.

40 Aff.23.

Michel.37.

38 Eliz.

68 *Lex non cogit ad impossibilia.* This  
the reason a Corporation, as Major and  
Comminalty may do pety ordinary things  
without writing, for the *infinity* of  
them, so a Sheriffe he shall plead general-  
ly *ea ratione, &c.* because of the impossi-  
bility to do otherwise in all the severall bu-  
siness of his office. The statute appoints  
that in *rediffisin*, the Sheriffe shall go to  
the place and there shall take the inquest  
if now the *rediffisin* is of a rent which  
issues out of divers Lands in severall pla-  
ces, so as he cannot be at all at once. Its  
sufficient to take the inquest at one of them  
&c. because of the impossibility, &c. lease  
upon condition he dwell upon the land de-  
mised, and he dyes at the end of ten yeers,  
the lease being for forty yeers, yet his ex-  
ecutor shall enjoy this tearm, because the  
condition is become impossible, &c.

69 *Lex judicat de impossibiliter fac-  
ienda quasi fractis.* So tenant in tayle  
suffers an usurpation, the issue is bound till  
the Church become void again, but if hee  
had

had made an appropriation of it. In which case by judgment of law it wil never come void again in this case, hee may bring his action presently as if it were absolutely void. A Covenant is that lessee will leave

46 Aff 4.  
I. Neveros  
Case.

the trees in as good pligt at the end of his terme as he found them, and he cuts them down, an action lies presently for the impossibility to performe , see 5. Report Temps E. r. F. Case , Sir Anthony Maine ruled upon the Covenant 29. same reason. A man submits to arbitre- 7 Report 15. ment, and then repeals the authority of the arbitrator , &c. this makes all impossible to go on, &c. and is as much in doome of law as if he had broke the arbitrement actually, and his bond is forfeited, but nota. The Impossibility must be absolute , for if the least possibility remayne it alters the law , as where the condition was upon a feoffment to re-infeoff the Feoffor , the Feoffee is disseised , and then acknowledgeth a Statute or takes a wife , &c. in this case at first sight in ordinary reasen it is impossible he cannot make this feoffment, but hee must enter before by which the Land will be charged with these incumbrances, yet because the wife may dye , or he may procure a release of the Statute be-

8 Report case.  
Viner.

2 Report Case fore the time of entry & reseoffment, there-  
Julius wining-  
ton.

fore no such impossibility is in the case to  
amount to a breach of the covenant. So in  
case of trees before, if the Covenant had  
been of a house in as good plight, &c. which  
is out of repaire, and the tearm is welnigh  
ended within three days, in which a kinde

12 E.3. Fitz.  
Tit. Covet. 2.

of impossibility is to doe it, yet an action  
doth not lye till the tearm be wholly ef-  
fluxed. E converso, The Law adjudges  
sometimes that is impossible to be done as  
actually performed. As where it was en-  
acted that a statute then made should  
have continuance till the King returned ~~at~~  
*partibus transmarinis*, and he dyed there,  
this statute is now determined, as if hee  
had returned. A lease is for yeers untill A.  
accomplish the age of 21, hee dyes at  
eighteene, this lease is determined as  
fully, as if he had come to one and twean-  
ty.

3 Report Case  
Borraston.

70 *Lex accepit voluntatem & dilig-  
entiam pro facto.* No place is limited  
where money shall be payed in the condi-  
tion of a bond, if now the obligor happen  
in company with the obligee intending to  
tender him the money, and the other shifts  
away to prevent him, &c. It seems in this  
case

8 E.4. r.  
per Catesby.

case hee shall be excused, because hee hath done his endevour. A man gives a Juror money to embrace him, though it happen the verdict do pass against this man, yet he shall be punished for this, & the law was that if one assaile me to rob me though he did not, yet he should die for it. See *Frosts Dyer* 99.

*Case 5 Rep. & Ridgways Case 3 Rep. & Plew.*

32. *Exception 2.* Not a, this exceptio where the Condition, *Act. or. &c.* is to be done to an estranger there, to do what in him is, will not serve, but it shall be actually done, and its nothing to have done *quantum in se est.* As a covenant is betwixt *A.* and *B.* that if *A.* upon the tender of a hundred pound makes him an estate, then *B.* shall release to *A.* *A.* is all times ready to make the estate *pro ut. &c.* but the 100*li.* is not tender, &c. *B.* in this case is not bound to make any release.

72 *Lex judicat de rebus necessariis faciendis quasi re ipsa factis.* One erects a jetty above my house, by which of necessity the raine will fall and run upon my house or curtelage. Its lawfull for mee in this case to debruse it and pull it down before any rain have falne, all one as if it had falne upon the house.

<sup>23</sup> *Eliz.*  
*Dyer 371.*

*5 Report Case  
Penruddocke*

72 The Law judges of that may be done as actually done. Upon this reason it is that the attornement by an Infant *in pais* is good, because he might have been compelled by a fine to do it. The Sheriffe may sell goeds without any *verditioni expinas*, because hee might by such a *Writ* have been compelled to it. A Rent charge is payed twenty yecres without acquittance, and after a *Writ* of annuity is brought, he shall be received to plead payment as to a rent because hee might have done so if he had issued for it as rent. An office is grāted for *yeers*, it is void because this may come to an executor. Albeit an es-  
soigne is not cast, yet because it might have been done, a Jury shall not be demanded the first day. The King discharges all Intrusions, &c. and one hath entred at this time, yet because office was not found it cannot be said Intrusion, but resolved because an office may be found when the King pleaseth, it is all one in law as if it were found see 4 Report Bevills case, bin to this purpose.  
Nota, If a thing is in my Will to have, it is all one as in my possession, so where it is in the will and power of a prisoner to escape, it is all one as if hee had escaped in judge-

ment of law. He which is acquitted upon an *Appeal* may this shew upon an Indictment, but if hee do not so he shall have no damages. See 4 Report Vernons Case.

Fitch. Coron. 432.  
Exception. 14 H.7.2.

73 The Law will judge of some things actually done as not done, & è converso. Tithes are set forth *actu*, but re-taken by the owner, it shall be as if they had never been set out at all, so money payed to lose a morgage, and if taken back againe, it is as if not payed at all. One hath a protection *de non moratur, &c.* Comes over to provide victuall, it is in law no comming to break the condition, *D' Itaque non redeat*, which is in it. A demandant enters into the land in question by disseisin to the use of another it is no entrie. Beasts escape out where the Lord comes to distreine as to him they are yet upon the land, and hee may take them, &c. one shall be said in possession of a Ward gone six houres before out of his possession.

Wades case.  
5 Report.

Institut. I.18.  
131.  
Institut. I.268.  
3 Report Case  
Ratcliffe.

74 The Law adjudges the same thing in esse, & non esse to divers purposes. An estate in remaynder discends to a particular estate, yet if he be an Infant hee shall not have his age, nor be in Ward by dissent of this remaynder, but shall be said in

9 E.4.18.  
40 E.3.13.

of his first estate. A particular tenant grants a rent & after makes a Feofment or  
 8 Report Case surrenders which determines his estate, yet  
*Archer, &* it shall be *in esse* to hold up the rent during  
 50 E.3.6. the said estate. Two men are bound in an obligation of a hundred pound, and a re-

6 Report Case covery by judgement is against one of *Higdens.* them, this dammes the bond as to him, but as to the other it is *in esse.* A man is bound in a Statute, and is seised of a rent and before the extent he releases the rent, yet it shall be *in esse*, as to the Conusee. He

7 Report Case in reversion infeoffs his Lessee for yeers to the use of I. S. &c. This wil work a surrenders by the law of the term. Yet by the Statute of Uses it shall be *in esse*, and is saved. The Lord releases to his tenant being an Abbot, who had purchased in Mortmain in the Seigniory is extinct, yet as to the Lord Paramount it is *in esse.* Lessor grants a rent, and then accepts of a surrender, hee shall hold now charged with this rent presently, but if he had granted the reversion to a stranger who accepts of a surrender, hee shall hold discharged of this rent during the life of the tenant for life. See 9 E.4

F.n.b.223.  
 14 Eliz. per  
 opinionem  
 Dyer.

18 and 6 Report, Sir Anthony Mildmays Case of a rent to cease for a time, and to revive for another time. 1 Report Anne

Mayos Case, simile 5 Report Halls Case in a sentence after appeal it is *in esse*, as to the costs. Vnde 6 Report, Lord Aburgan venies Case, 9 Report Case, *Strata Marcella*, where its laid those things are *in esse que jure sunt*. Vouchee is tenant in law, but to some purpose, not to have a release *Institutes* 1, to him, so tenant by courtesy who hath 273. granted over his estate.

76 *Quod lex dicit factum est sic ac-  
si, by the party himselfe.* This is the reason that in all dealing with officers, tradesmen, &c. they will declare that agreement, was to give them *tantum, quantum meruit*, & though no such agreement can be prov'd, it shall passe for them as if such agreement had bin proved as in case of a Taylor, it is good evidence that he put the clothes to 8 Report 147, make without more the Law says the rest.

77 *The Law judges that is illegally done, as not done at all.* One gains the estate of a copy-holder by disseisin, and leases this for years, this shall not destroy the custom. A man takes beasts for to agist his common, this gives him no seisin because not legall to use his common so. 4 Report Case of Copyhold, 22 Aff. 84.

78 *Leges priores per posteriores abro-  
guntur, & contra.* But then the later

Statute must be contrary to the former in substance or quality, and so if the later be negative, as *assisse non capiuntur nisi in proprio Com.* This of more power then if it had said, *ascisse capiuntur in proprio com.*

**21 Report 62.** In the first it will warrant a plea to the jurisdiction of a Court, in the latter not so, if he be impleaded in any other place then the Countie where the Land lies.

**38 H.6.18.**  
**8 E.2 Judge-  
ment 240.** But a Statute in the affirmative doth not alter a statute formerly made, or a custome.

Statute 21 H.3. is, that if one who hath a benefice of the value 8 pound takes another, and is inducted, the first is void, this doth not alter the Law before that the second benefice doth make void the first, though of lesse value then 8 lib. and so before induction in such case. A man hath

**4 Report case.**  
**Dixby and  
Holland Case.**

wreck by prescription, and it is enacted, *Quod Rex habebit reckum maris per totum regnum:* This shall not take away my prescription, *alter* if the prescription had gone *per totum Angliam*, and so as large as the Statute: As the Statute 5. Eliz. 4.

**5 Report case**  
**Sir Hen. Con-  
stable.**

**9 Car. case.**  
**Bradshaw v in  
b. Roy.**

In acts that he who sets up such trade must be apprentice before, &c. alters the custom of the Realm to trade freely before without such service presedent. The Sta-

tute

ute that Sheriffs shal deliver Indictments to the Justices of Peace by Indenture, yet if he do not so, they are not void. Things <sup>4 H.7.11.</sup> of necessity are not altered by generall words of an Act of Parliament. So if a- <sup>10 Report 61.</sup> gainst common reason, *Pl. 88.* So if ab- <sup>5 Report 71.</sup> surde, *Dyer 314.* <sup>7 Report 14.</sup> 27 H.6.tit. *Annuity 41.* *Institutes 2.* 198. *Dyer 224.* 43 E.3.22. It is ordained that Commissioners Ecclesiastical shall punish abuses against the book of common Prayer, yet the Ordinaries jurisdiction is not taken away. See *Institutes 1.* 96. to this bene. The words of a later Statute by Construction or Interpretation <sup>4 E.4.3.</sup> onely shall not abrogate a former statute, <sup>7 Report Kew</sup> case, yet costs were due in a *quare impedit*, by the Common Law, and damages are given by statute *W.2.* in this action. Costs are by construction taken away. So the statute of *Marlb. cap.6.* is repealed by the affirmative statute of *32 H.8. of Wills.* See by mee if it is not because these are contrarious in reason, which equall as if in expresse words.

78 *Lex non cogit ad vanam per agenda.* But rather in some cases will allow the thing as done whch should be in vaine to do. Lessor Covenants upon Surrender to make

make a new lease, he grants the reversion away for yeers in this case, the lessee need not make any surrender, but shall have his action so soon as he pleaseth, because it is vain to make a surrender when the Lessor hath himself disabled, &c. by his new lease, Covenant to sing Masse in such a Chappell which falls down, the Covenantor needs not goe thither and proffer to sing Masse there, &c. Goods are delivered to re-deliver upon request, the Bailer delivers them to a third person, I may take them without request, Protection is cast in a cause where two are sued as husband and wife, and shee comes and pleads she is not his wife, she shall not be admitted, and for this cause though shee desire it not, yet she shall not be estopped to say she was a Fem sole. The Lord covenants upon surrender of the old Copy to make a new one, now because the making of a new Copy is a surrender in law of the old, therefore an action of covenant lyes against the Lord if he doe it not without such surrender which was idle to make. Exception is to this rule. In case the thing may be of some validity, and is not absolutely vain, though revera it is idle. As where I.S. is bound to present I. D. to the Church of Sale

Report Case  
Sir Ant. Maine.

11 H.7.10.

7 H.6.31.

17 E.3.16.

Michael. 11.  
Car. Rot. 310.  
B. Roy.

when this shall next be void. In this case though the obligee is married, &c. by which hee was disabled, &c. yet hee must be presented if hee will save his bond be- 20 Ass. 1.  
cause he may have a dispensation from the Perkins 157.  
Ordinary. So where *Vitany* in felony is to be reversed, a *Scire facias* shall go to the Lords, &c. though he hath no land, &c. until the Court shall be apprised thereof 7 H. 7. 5.  
by return of the Sheriff, or the Kings At-  
torney. See 39 E. 3. 22. 23. 21 E. 4. 40. 47.

78 *Lex non habet in syllabis vel literis modo de substancia constat.* A Writ is that 16 E. 4. 3.  
such a one *fuit non componens*, and the 39 H. 6. 43. ib.  
traverse to this was that *absque hoc quod fol. 39.*  
*fuit extra sanam memoriam & bene.* So  
*Iturus* is put for *profecturus*, its well e-  
nough. *Avowrie* is because a 100 pound  
*pro redditu predicto*, was behind, and suffi-  
cient though *de redditu* had bee more  
a.  
The King brings an action of ac-  
count, and the Writ is, *quod reddat Com-* 25 E. 3. placito  
*potum nostrum.* Where it should be *suum*,  
and yet holden good. The Mesne grants  
to the Tenant to acquit him against the  
Lord Paramount and his heires, hee shall  
acquit him against his wife, &c. A bond 1 Institu. 241.  
is to resigne to the obligee, yet it shall 14 H. 4. 18.  
bee

bee done to the Ordinary.

So *The Law is sometimes stricter then the words of the party in force.* The Lessor grants if the Lessee is disturbed he shall have fee, every disturbance wil not do it, but shal be of the lessor himself to raise this Contingent fee. A remaynder is limited to children unprofered, this shall be such as are not preferred when this remaynder happens to fall, and not unpreferred at the time of his death, who made such will for if they be preferred afterward before the remaynder fall it is sufficient. A statute is that Justices of Gaol-delivery, or Oyre and Terminer or any two of them shall heare and determine, &c. in this case though there be but one, bee shall execute this well enought.

Ibid. case

Alice Fulhurst.

Institutes 3.

236.

22 E.4.18.

81 *Lex non est curiosa.* Winks at small faults, one brought a Writ of Conspiracy for indicting of him the fourth of August, the Defendant makes a Justification for executing the office of Justice of Peace, without that he was guilty of any conspiracy before the said day or after and ruled good though he doth not precisely answer the very day laid. An action *quare fossa-  
tos fregit*, where it is more proper to lay,

pre-

8 Report case  
Frances.

prosteravit, yet ruled good. A lease is 12 Aff. 28.  
 made to B. and his wife, she survives and Plo. 192. cas.  
 marries W. and in pleading of a new lease,  
 It is said to begin after the end of the lease  
 made to W. and yet held good. Assumpsit  
 was in consideration hee should surcease  
 querelam pro 7 li. and it was an action  
 upon the case which is not for a suintne 10 E. 3. F.  
 certain, but dammages seuen pounds, yet  
 holden good by the better opinion. Ac-  
 compt is brought of a resceet per autor  
 Mains, and a release pleaded of accompt  
 by himself, and admitted good. Champerty 27 Aff. 5.  
 quod cepit mainutenere & adhuc mainte-  
 ret, in a plea which is ad judged and deter-  
 mined, and adjudge good, yet it cannot  
 be good in the present tense, Misrecit all is  
 of the very ancestor, as a man says himself  
 heir to the grandfather, whereby the office  
 it was to the father, yet good. A condi-  
 on was to lease as, A. thinks meet and in  
 the record its pleaded non demisavit, nec  
 appunctuavit and good, so not curious in  
 the translation of the English into Latine,  
 In case of walte de hominibus, it is proper  
 to say in exilio hominum but if he said fecit  
 vastum in hominibus, it is good enough.  
 Vient lassie supr a titulo, where it appeares  
 be-

Adams.

Hill. II.

Car. case Law  
rence.

10 E. 3. F.

Release 38.

10 Eliz.

Dyer 359. 360.

Report 23.

2 H. 6. II.

before there were many titles, and yet good, *Vide 38 E. 3. 20. 27 H. 6. Ultimo. Curiosity circa horam diei.* Upon this reason it is that fuit is oftentimes admitted for est, pertinent for usually occupied, ancient office for partie continuance &c. *Vide ante verbo Idem.* The obligee says to the Obligor, that he himself is discharged of all bonds, this is a good release being by deed, albeit it is improperly spoken.

81. *De minimis non curat lex.* A quill full of gold or silver oare shall not cause a copper or tin myne to be to the King as a myne royall. *Nota,* Amercement is so small a thing a man shall not be restored to it, though there be a lawfull cause to to discharge it, so where a judgment is reversed, I shall not have restitution of an amercement given against mee, cutting of trees to the value of two pence is no waste. See *Plo. 85.* where it is said that a lease for an house of a pretended title or right is within the statute of 32 of *H. 8* of buying tirkles.

82. *Law presumes more then the partie himselfe sayes.* An Ordny returns for cause of divorce that the parties are *infra ambos nubiles,* &c. The Law sayes there are

Dyer 316.

10 Report  
of B. Salisbury.

10 H. 7. 27.

Plo. Hill. &  
G. Case.

9 Report 52.

Plo. 339.

8 E. 4. 25.

F. n. b. 60.

Plo. 329.

7 Report Case  
Kens.

are more causes. A man is bound to infesse  
me of Lands worth ten pounds by year,  
&c. pleads that he infeoft me of the Man-  
nor of D. and S. which are worth ten  
pounds by year, it is no good reply to say <sup>14 H.7.15.</sup>  
he infeoft me of the Mannor of D. onely,  
without saying what it's worth, for it  
may be worth ten pound *per annum* of it  
selfe, though hee said both were but of  
that value: a man covenāts with I.S. that if  
he do not warrant the Land to him he will  
save him harmelesse upon suit, he enters  
into the Warrantie, though this satisfies  
the words of the Covenant, yet not the  
Law, for hee shall render to him in value,  
otherwise, he doth not performe the Co-  
venant.

83 *Lex intendit optima perfecta &*  
*effectuaria, & legalia.* A man hath es-  
tovers in a wood, and he comes with force  
and armes, and cuts down trees, it shall <sup>14 H.8.7.</sup>  
be intended for his estovers, and not other  
wise, for where the thing stands indifferent  
right or wrong, the Law always judges the  
best: Where it's said such a thing to be  
done, it shall be intended *prima facie* law-  
fully done, as where one pleads that hee  
was possessed of a Hawk, *ut de bonis proprio* <sup>Dyer 306.</sup>

it was intended lawfully, where speech  
is of time indefinitely, it shall bee intended  
the present time. A man is bound  
to appar, it shall be in person. Where  
it's agreed a fine shall be levied, it shall be a  
fine upon the stat. of 4. H. 7. A challenge is,  
because such aone was sifte to the Sheriff,  
it shall be intended of the whole bloud.  
Where speech is of a judgement to bee  
given, it shall bee intended finall judge-  
ment. A Lease is made to an Abbot for  
life, it shall be intended his naturall life,  
and if he be depoſed, his ſuſceſſor ſhall  
have it during his life. Hee that claimes  
conuſes of plea in his own caſe, the Law  
ſuppoſes he will doe right and be indiffe-  
rent. A Statute which ſpeaks of attein-  
dors of treason, intends legall attendors,  
and not erronious: ſo of an office, where-  
of an affigne intend it a complete affigne,  
&c.

85 *Lex omnia suaviter, & ad melius*  
*diſponit.* A Writ is, reperare & munda-  
re foſſatum & ripariam, The Law will  
apply the moſt apt Subſtantive to his  
verbe, mundare to foſſatum, reperare  
to the bankes, &c. The ſolvendum  
was to the Obligor, the Law will alter it  
and

42 Aff. 21.

6 Report Case  
Colliers.

10 Report

3 Report Case

Fines.

Plo. Case.

willowby.

11 Report

Case Metcalf.

5 H. 7. 25.

37 H. 6. 18.

35 H. 6. 54.

Institutes 3.

214. 185.

5 Report 112.

Plo. 220.

29 H. 6. 23.

46 E. 3. 38.

4 E. 4. 29.

and make it to the Oblige, and so the Plaintiff shall declare *quod nota*. A Writ of entre is upon the Statute of W. 2. *quare 4 E. 4. 29*  
*ingressi sunt manerium de A. & B. ac unum messuagium*, ten Acres of pasture, ten of meadow, in the Town of P. &c. and the case was that no such Town of P. is without addition, and so in strictnesse of Law the writ was to be abated, but now to save this the Town shall be referred to messuage and lands, and not to the Man- *19 E. 4. 6.*  
 nor which is good without any vill layed and the writ abated, as to those and stood good as to the Mannor by this fair and handsome disposition of things. Trespass *quare clausum* of husband and wife, & *bona suacepit*, and declare of a taking before marriage, and the Court said that this *7 H. 7. 2. 3.* word *sua* being indifferent shall refer unto the wife onely, and so good by this ordering that word, Trespass *contra pacem*, R. 2. & *Regis nunc* where part of it was in the one Kings reign, and part in the other, and so declared, though the Writ is joyn *contra pacem*, the trespass shall *11 H. 4. 15.* be so marshalled to make it good. *Cessavit 37 H. 6. 2. 17.* is of divers services, it shall be referred to such services onely in which the Law says

6 H. 7. 7.

a cessor may be and not to others, as ho-  
mage, &c. In a *Quo warranto* prescripton,  
is alleged for waife and possession of the  
Abbot, and the Act of 32 H. 8. of Reviver

9 Report Case pro *catellis felonum*, & eo waranto cla-  
Abbot Strata mat omnia ut spectant to the Mannor and  
Mercella. good, though *catalla felonum* cannot in

Law be spectant to a Mannor, the Law  
will refer this word to other things before  
mentioned, which may be appertenent to  
a Mannour, or else make that word as  
void, rather then overthrow all. A man  
grants a rent *de molendino suo percipiendu*  
*m de se & heredibus*. The Law will  
marshall it thus that he grants the rent for  
him and his heires, *percipiendum*, out of  
the Mill, &c.

22 Aft. 66.

86 *Lex semper dabit remedium*. A  
man leases land excepting the trees, he  
shall by law have free egress and regresse  
for to come and cut them down and carry  
them away. Where the statute gives a third  
part to him who discovers an offence a-  
gainst any statute, he shall have an action  
for this, albeit it is not expressly given.

24 H. 8. 1.  
11 Report  
Lifards Case.  
1 Report 93.

37 H. 6. 4.

87 *Lex judicat de insufficienter vel vane*  
*factis quasi omnino infectis*. A Baily of a  
Franchise makes an insufficienr return, it

is as if *nullum dedit responsum*, and a non *Institutes 2.*  
*omittas* shall be awarded, and hee shall <sup>453.</sup>  
 lose the franchise, *hac vice*, no office and <sup>5 H.7.28.</sup>  
 an insufficient office all one. *Summons by* <sup>3 H.7.11.</sup>  
*one Sommonour*, is as if none at all had  
*bis*: if a rent is granted but no attornment it <sup>Stamforā 51.</sup>  
 is as no grant. *Presentment to a Church ful* <sup>50 E.3.17.</sup>  
 before, though the presentee hath accepted <sup>14 H.8.21.</sup>  
 of it, will not determine his annuity gran- <sup>26 E.3.69.</sup>  
 ted him till he should be presented. *A man* <sup>Fitz Coron.</sup>  
 is acquitted upon an insufficient *Indict-* <sup>44.</sup>  
*ment or appeal*, no damages shall be given,  
 but is as if no *acquitall* had been. *The* <sup>27 Aff.25.</sup>  
*power of an arbitratouris* repealed, but <sup>8 Report Case</sup>  
 it is imperfect because notice was not, &c. <sup>Vinor.</sup>  
 he may well plead, *non revocavit*. *An ap-*  
*peal is brought upon an Indictment*, but  
 because the *Indictment* was insufficient it  
 shal be taken as no *Indictment* had bin, &  
 abettors shall be enquired off. *The same* <sup>20 E.4.6.</sup>  
*law is where a thing is done in part onely*,  
*as where debt is payed in part. Vide* <sup>10 H.7.24.</sup>  
*5 Report, Case Lord Mountjoy. Institutes 1.25*  
*4 Report, Case Vernon.* The same law is  
 where a thing is *vane factum*, and so accep-  
 tance of a *vaine* thing is as none, a *Com-*  
*mission of the Peace* is direct to two, which  
 are dead, this will not repeale a former <sup>P. Brook 509.</sup>

27 H.8.22.

49 E.3.3.

10 E.3.32.

14 H.8.21.

34 H.8.2.

10 E.4.56.

10 Aff.14.

4 Institute 48.

11 Aff.26.

Commission. One makes an Indenture or other Writing under seale of receipt of goods, this works nothing more then if no deed at all had been, but a deed of receipt of money shall conclude for to say *unques son Receiver*. A ~~Metropolit~~ doth commit administration where there were not any *bona notabilia*, &c. it is as none. An Infant grants a rent, or no attournment is to such grant by the tenant in case of a man of small age these may plead ne *grant a pass* for the insufficiency of them.

88 *The law will accept of that is good in grants or pleadings, and reject the surplus.* I infcoffe *A.* and grant to *B.* by the same deed that I shall warrant for me and my heires to *A.* that is a good warranty to *A.* and the words to *B.* are void, A man grants 20 load of buche to *Io. Rosset* and his heires, *quorum 16 predictus Johannes habuit ex dono Richardi patris mei*, &c. albeit *Io.* never had any such grant before of the Father, &c. the grant is good for the whole loads. A Bishop certifies bastardy, and endorses the reason because the Father was absent seven yeeres. The Law will reject this later part, and restrain the former of Bastardy A Writ goes

goes to chuse a Burgess of Parliament, no Lawyer, the Law rejects this last.

89 *The Law is more agile in working then the act of the party.* This the reason that where lands are devised to him, that is heir at law, he shall be in by dissent, and not by the will. Tenant by the curtesie is the reversion to the wife of I.S. he infeoffs the husband and wife, it shall be a surrender 11 Aff, 24. to her, and the *husband takes nothing.* See 20 *Aff. 16.* 35 *Aff. 11.*

90 *The Law where it enjoins an Act to be done will provide he shall not be hurt, à latere that doth it.* And for this, where I have annuity and many arrears are, and then, it's due at Mich. subsequent, and I do receive it then and give an acquittance, now because he is not bound to pay it me without acquittance, therefore because I could not receive it without this acquittance, it shall not bar me of the ar- 3 Report 65. years due before, aliter, in case of rent.

91 *The Law regards the principall thing, and not additionalls.* As in case of a Mill, which is in demand, it's no matter whether Corn-mill, Paper-mill, or Fulling-mill. A. grants me the yearly annuity of a robe with furs, when I come to sue

4 Report Case Luttrell.

17 E.3.73.

for this, I shall onely mention a grant of such a robe yearly, without mentioning furs.

28 E.4.15.

92 *The Law adjudges the deniall to doe a thing as the not doing it or breach of Covenant, &c.* A. delivers B. ten pounds for certain woad, if hee like it when hee sees it, and if hee like it not, then to re-deliver the money, if when he sees them he deny to have them, the bargain is determined, and no agreement after will make it good. A man is bound to doe an act when I request him, and he sayes hee will not doe it, hee hath forfeited his bond.

21 H.6.1.

29 Eliz. Dyer  
356.

Pl. 260.

13 H.7.14.

93 *The Law is not satisfied with shadows but substances.* It is not sufficient for a labourer to be retained in service, if he doe not actually serve. If one accept of a thing in satisfaction of another which is of no value it is not good. See *Wades Case*, 5 Report, to this purpose: 46 E. 3, 26 & 33. 46 E. 3, 28 *Case of Warranty*.

94 *The Law hath an eye to the beginning of Acts.* A Lunatike smites himselfe with a knife, and after becomes of fane memory, and dies, hee shall not forfeit his goods. I have an intent to strike I. S. and

and it happeneth upon I. N. it is a mai-  
hem, &c. If presentment be in time of  
war, all done upon that is void. A servant  
kills his Master after he is departed upon  
malice conceived before in time of his  
service, this is petic treason. A man a-  
bates parcell of a gorse, by which all is  
broken in time shortly after hee shall bee  
charged of repairs of all and shall answer  
daimages of all.

6 E. 3. 41.

2 Report Case  
Bingham.

Fitz Coron.

210.

16 Ass. 3.

95 *Loquendum ut vulgus.* A. sells to  
me ten Acres of corne, it is good onely  
for the corne, and upon this reason shall  
the construction of a deed be made to con-  
troul the sense of the Law.

96 *A lawfull act by matter, ex post  
facto, may become unlawfull.* So where a  
distresse is taken well, and killed after-  
wards, so if it be sold, or hee claime profit  
in it. A man hath a house boot, and takes  
this every yeere, as he may doe though he  
use it not of 20 years after, for it is not  
good to build with before it be seasoned,  
if now he sell it or convert it to other uses,  
he is a trespasser. The same law is where  
an act is well done by authority of the  
partie, as I deliver a chest to one who  
breaks it, trespasser lies, he which is di-

16 H. 7. 14.

2 E. 4. 5.

22 E. 4. 47.

13 E. 4. 9. 9.

9 H. 6. 29.

11 Report 11.

10 E. 4. 3.

M. 2 H. 8. Kell.

22 H.7. Kell. strained payeth his rent, and afterwards is denied to have his goods delivered, hee shall have an action of trespass or detinuer. So in many cases by not doing some *act subsequent*, a former lawfull act shall become unlawfull, as where the Sheriffe makes an arrest, and returns not the *Capias*, or if it be done by his Bailiff or servant, and no return, it will make the Sheriffe himselfe a trespasser though not the servant who is to be quit in such a case, &c. An Executour commands the taking of goods of the testator, and after refuseth to prove the Will, he is a trespasser, but not the servant, the Sheriff seizes the goods of one out-lawed and after doth not charge himselfe in his account with them when the partie is pardoned or out-lary reversed, hee shall have an action of trespass against the Sheriffe, The Ordinary refuseth a Clarke for lawfull cause, as insufficiencie, if he examine him afterwards, and accept him, he makes himselfe punishable for the disturbance before. A Writ well purchased by matter subsequent to Report 134 as death of one of the demandants may become in apt or false, and so abate. A man is arrested by command of the Justices in

in *Westminster* Hall, this is justifiable, the same Term, without record therof, but in another terme not, unlesse a Record bee of it, and by negligence herein he may be punished by false imprisonment.

10 H.7.17.

97 *Malitia mutat legem.* A is bound to inclose against a close of mine called White Acre, if my beasts go into his for lack of his fence, it is excusable, but if my Close be sown with Corn, &c. by which hee was secure and made not his fence, if I should now put beasts into my Close so sowne of purpose they may escape, &c. there he is not to be excused. So an Infant in case of Murder shall be tryed for his life where malice and subtlety appears, *aliter non.*

39 E.3.3.

3 H.7.

98 *Melior dabit nomen rei.* Husband and wife joyn't executors, the Writ shall be *executoribus* and not *executrici*, some convenient proportion of gold or silver oare shall give the name to a myne to be a myne Royall, though a great bulk of Tin is. Lether of a sho shal give the owner ship of the threed of I. S. used in the making to the owner of the leather, and so he shall have all the property.

22 H.6.30.

Plo.323.

5 H.7.16.

99 *Magis dignum trahit ad se minus.*

Char-

14 H.4.30.  
 10 E.4.14.  
 40 H.6.18.  
 42 E.3.13.  
 29 E.3.19.  
 43 E.3.13.  
 22 H.6.27.  
 33 H.6.14.  
 18 H.6.35.  
 20 H.6.32.  
 21 E.4.34.  
 46 E.3.8.

Perkins 50.

Charters are put in a box, this alters the nature of the box from a chattel, and now it shall goe to the heir, and it is no felony to steale this box, nor lies a *Capias* of it in detinve. See 30. H 6. *Fitz.tit.bar.simile*, Where the realtie shall prevail, issue is, if such an one was instituted and inducted, the tryall in this case shall be by jury by reason of the Induction. A man reteins a servant to serve in all occupations, now because wager of law doth not lye in case of service in husbandry if debt is brought for wages, hee shall wage law in none of them. An action against two, and the one ought to have priviledge of Chancery, he shall be outed of this and all shall be at the Common Law. A Lease is of a chamber & a bed rendering rent, in debt for this rent, the defendant shall not wage his law for the bed, because the other is *Magis dignum*, and shall rule the other. An exchange is of Greene Mede for blacke acre, and twenty shillings rent in this case all shall be by deed, not that the land is lesse worthy, but because if it be not by deed it will be void for the rent, and so overthrow the exchange for all, See 11 Report Case Auditor Curte 46 E:3.8.

100 *Maggis continet in se minus.* Plus  
all number comprises the singular, &c.  
If a man is bound to pay twenty pound  
and tender is of that and more it is good.  
Commons grant tonage and poundage for  
four yeers the Lords agree for two yeeres,  
they need not send backe this bill to the  
House of Commons for their assent. Cu-  
stome was to grant Copyhold estate in  
feodo, this implies that hee may grant for  
life, &c. *Quare impedit*, in the Register is,  
presentare ad Ecclesiam, by this hee may  
have protertia parte, &c. Procedendo, sup-  
pose an Affise before Stonfe & Burton, Ju-  
stices, &c. and it was also before Shard,  
& good because three implies two. An a-  
ction of battery is brought & the evidence  
for this proves it a *Maihem & bene* because  
it is battry & more. A man is restored to all  
lands forfeited by his father in fee or tayle,  
that he hath but for life, shall be restored. 39 E. 3. 20.  
Exception. Traverse is of a feofmēt by two Plo. 86. 7.  
pleaded, and its found that the Feoffment 7 H. 7. 13.  
was by three, It is against him who pleads  
this. *Vide 9 Report 52. 3.* Power is given 14 E. 4. 1.  
to make leases for yeeres, &c. Yet he may 6 Report Case  
make one lease onely. Fitzwilliams.

33 H. 6. 17.

4 Report Case  
Copyhold.

10 Report 136.

31 Aff. 1.

39 E. 3. 20.

Plo. 86. 7.

7 H. 7. 13.

14 E. 4. 1.

6 Report Case

Fitzwilliams.

101 *Modus & Conventio vincant  
legem*

legem & Regem & contra. This rule is agreed in *Magna Charta. Conventio legi deroget*, Barreth the Law as the translator hath it. The Law says *Dyer* will not determine contrary to the agreement of the parties, and for this cause where a gift in tayle is, the law says its to the use of the Donee, yet by the deed it may be to the use of the Donor. A rent is granted to one and his assignees *pro consilio*, this may now be assigned which without this agreement in the deed could not. And note by this agreement a man may tye himself to things out of his power to do, and which, *quodammodo*, are impossible & which the law frees a man of by common right. As where a man tyes himself to repaire, banks which are subverted by a floud, yet hee is bound to repair them. So to repair a house blowne downe by tempest, which was a good plea in an action of waste. So where the Lessee tyes himselfe to leave a house in so good plight as hee found it, if it was feeble at the time of leasing and falls down, he shall make a new one, which by law he was excused of. Sheep are letten, & the lessee covenants to render the polls at the end of the terme, he shall do so though they

W. 2. 50.

Dyer 181. 312.

7 Report  
Mounds Case.40 E. 3. 6. & 2.  
Dyer 33.

8 E. 4. 9.

they dye of the Murrain, &c. The banks  
 may be repaired, the house built, new  
 sheepe bought, for to render the poles <sup>40</sup> E.3.2.  
 is the number not the very same. A man  
 undertakes by covenant to get the good  
 will of such a woman, or that a beggar  
 shall pay 1000 pounds that such a field of *Perkins A.*  
 corne shall grow, &c. that such a woman <sup>146.</sup>  
 shall have a childe, that I. S. shall make a  
 feoffment of his Land, the Law says these  
 are possible, but if the Law say it is impos-  
 sible, I am not bound by my Covenant, as  
 where it is to leave a Wood in as good *Vide Dyer 33.*  
 plight at the end of the Term & its blown  
 down, so to goe to *Reme* on a day: So of  
 the case where it's covenanted, such a me-  
 adow shall not be surrounded, or that such  
 a house shall not bee burnt, and it is by  
 lightning, &c. it seems in neither he shall  
 be bound because impossible: So also where  
 the matter agreed is against the Law. A *Poulton de*  
 man agrees with I. S. that if hee pay him *Pace Regni,*  
 not 20 pounds, he shall imprison him, &c. *&c. 11.*  
 though he payes not the money at the time *See Heyburns*  
 agreed, hee cannot imprison him. So a *Case. 14 E. 2.*  
 man agrees to a By-law made to imprison  
 for the penalties, &c. this shall not binde *cited in the*  
 him, Justices of assise held plea of Land in *Case of Ship-*  
*5 Report 64.* *money.*

another Countie, then their warrant was, and the parties did agree to it, this shall not binde them, but if either is put out by execution, *inde, &c.* hee shall have an Assise. If parties agree the distresse shall be irreplegiable, this is void, as against Law. The Defendant would render the dower at the day in the writ, but did forbeare by consent of the Plaintiff, yet hee shall bee amerced. The King reserves a rent, and a condition to reenter, if it is demanded and not paid, but because the law is, the King need not make any demand, he shall enter without demand, this speciall agreement notwithstanding. So in case of incidents which are inseparable by Law, no agreement of parties will separate them, as where an Annuity is granted for the exercise of an Office, and there is a proviso, if the Office bee taken away, yet the annuity shall continue, if the office is taken away, it shall cease. See 44 E. 3. 19. & 36. *bene*, to this purpose. *Ligat Regem in casu.* The King makes liverie to his Ward, without excepting that the dower shall be assigned to the wife by him: the King is bound by this and she shall sue the heire in a Writ of dower. The Kings Tenant alieneth part of

8 A. 16.

Institute 1.  
146.

18 E. 3. 39.

7 E. 6. Dyer 87

5 E. 4. 8. Case Garter.

F. n. b. 264. D.

of the Land holden, the King may distrein  
this alienee for the whole rent, and is not  
bound by the Statute *Quia emptores terrarum*,  
but if the alienee make a fine with  
the King for this alienation, then hee  
shall onely pay his part of the rent.

F.n.b. 235.

102 *Nihil dat, quod non habet.* A  
Tenant for years cannot give seisin of rent  
issuing out of free hold to maintaine an *prediman.*  
assise, because himselfe hath not free-hold.  
Conusee by fine of a Reversion bargain,  
this to I. S. hee cannot distraine, because  
his barganer could not. Reversion is, Report Case  
granted by fine, the grantee disseise the *Knotford in*  
tenant and infeoff, the lessee enters, this is *Case Malory.*  
no attornment here, because hee shall not Plo. 281.  
be in better plight then his feoffor: An  
administrator cannot have greater proper-  
ty in goods of the Intestate, then the *Ordinarie*  
himselfe had before, yet by words in  
the Statute he hath. Issue in tayl being  
bound by the Statute to pay debts of the  
Kings when the estate by alienation shall  
be disposed nū to another, hee shall bee in  
better case, and is not bound to pay these, Report Case  
debts, for the Statute extends not to him,  
& so is at the cōmon law, in which case by  
death of tenant in tayl the issue & al under  
him

him were discharged, so where a custome inlarges the power of a Grantee. A Lessee of a Mannor is, excepting the trees, in

**8 Report Case** which Mannor are Copyholds now hee

*Swain.*

himself cannot cut trees they are excepted, but if he grants a Copyhold, the grantee may cut trees by the custome which outstrips that Lease.

**5 Report Case** Upon the same reason it is that *Prerogative* of the person of a Knight.

**5 Report Case** a reversion in part is granted to the

*Mallory.* he may enter for condition broken in

this part, which the Grantor could not do. The like law is when a man comes in by

act in law, as by Escheat, &c. hee

may distreine though he who dyed without heire could not do so. A subiect of the

King of *England*, enters bond to a sub-

ject of the King of *Spain*, enemy to the

Kirg, it is void to the party, yet the King

shall have it and recover the debt which

the obligee himself could not do. The King

grants Conusants of plea in the Mannor of

D. then a new action is given by Statute

which was not before, the Grantee shall

hold plea of this though it was not in the

Grantor. *Vide 4 Report 23.*

**19 E. 4. 6.**

**22 E. 4. 23.**

**7 H. 4. 1.**

*Fitz h. Prohi-*  
*bition. 10.*

103 *Nemo bis puniciatur pro uno delicto.* An Ecclesiastical person recovers damages in trespass, hee shall not be punished again in the Ecclesiastical Court, but this seems *quoad partem ipsam*, but by suit *ex officio* he may, so the partie against whom damages are recovered in trespass may bee fined at the Kings suit upon Indictment, &c. and so in many cases, where the wrong trenches upon severall persons, as a servant beaten, so in case Baylor and Baylee they shall have severall actions. So Disseisor and Disessesee tenant for life, and he in the remaynder shall punish the forget of false deeds. See 40 E.3.11.43 *Aff.9.*

104 *Negativum nihil implicat, in a  
precipe quod reddat.* The tenant wages his law of non-sommons, this doth not imply that he was tenant, nor shall conclude him, others *contra*, one pleads, *ne chasa  
pas*, in Frank chase of the Plaintiff, this is no granting that hee hath a free chase, but hee must prove it. One prayes to be received the demandant sayes that hee hath nothing in reversion day of Writt purchased, this doth not inferre that hee had after the writ purchased, but if he hath

H

hee

7 H.4r.

Fitzh. prob.

ibid.10.

20 H.7.5.9.

15 E.4.25.

32 H.8.4r.

33 H.6.26.

30 E.3.26.

48 E.3.13.14. hee ought to have mentioned it upon his Prayer.

104 *Nemo tenetur seipsum prodere.*

And for this in Cases criminall he may refuse to answer to matters which tend to prove evidence in this, and if hee deny the matter, it seems no perjurie to be punished though hee answer otherwise then the truth is, and so Sir John Walter held in case of an answer of a defendant in Star-Chamber, hee should not be charged in this for perjury. Exception.

40 A.1.35.

13 H.7.29.

There was a man examined upon oath of goods of the Kings which were devised to him, and come to the possession of the defendant: and a juror may be examined upon oath if he have sufficient free hold, this is no crime, &c.

105 *Negatio duplex est affirmatio.*

9 H.7.13. *A distresse was pro servitio inf. eto.* The defendant sayes, *Quod non fuit inf. etum,* Vide Litt. 220. and ruled as good a plea, as if hee said it was done, though Conisby said it was but an argument in case of a grant, but it seems such Logicall curiositie shall not hold to avoid a grant. It is said such a thing *Non oportet fieri, nec non* such a thing, though such

Institutes 1.

146.

such expressions are *duplex negatio*, yet its holden a good negation in Law, and no affirmation.

106 *Ovune est a defeter chose ceo ne serra object alue.* One brings a Writt of conspiracie to defeate a villenage <sup>42 E.3.14</sup> <sup>8 E.4.6.</sup> *onus perfrand* it is no plea that hee is his villaine, so in *libertate probanda*. In error outlarie *pro fine Regis* is pleaded a- <sup>7 H.6.4.</sup> against him, and holden no plea, for hee is to defeate all by this Writ, in error for to <sup>6 E.4.9.10</sup> adnul an outlary, if he is twenty times outlawed, it shall not stop him, but hee may go on with his Writ of error. The husband makes a Lease for life, of the land of <sup>7 H.4.10</sup> the wife, rendering rent, and dyeth, the heire of the wife brings a *sur cui in vita*, the Tenant shall not alledge the reversion, and assets in the heire for that that he is to <sup>38 E.3.</sup> defeite this warrantie, but note where the colaterall thing to be defeated is a legall bar of the principall right, there it will stay him, as where a writ of errour is brought to reverse a recoverie, and a colaterall warrantie is pleaded, this warrantie will bar him of his Writ of error. <sup>3 Rep. lin. col.</sup> <sup>Case 61.14.</sup> <sup>6 H.6.3.</sup>

107 *Ou chose fait per implication serra bone*

Institutes 1.  
180.

*bone, & contra.* A Letter of Attourney is to two to make liverie and seizin, and the one of them makes liverie the other being present, and nothing saying that is not good, but authority to three bayliffes, and to every of them, and two executes it, this is good because it is for the promotion of justice. A record is *Jurati. exacti. comperuerunt, quorum duodecim super sacram suum dicunt, &c.* and doth not say, *electi, triati & jurati*, this is errour though those words are implied in these words, *super sacram*: Aid is prayed of the patron and ordinary, which are returned, warned and doe not come, it is as much in Law as if he had come pleaded, and assented. A termes doth not come to save his default, it is as much in Law as if he had come into Court and said, that hee would not save his default. In an Assise the Sheriff returns, the Baliffe was attached, and exception taken because the Sheriff did not say, the partie could not be found and ruled that it is included, and is welle-nongh.

I R. 3.4.

4 H. 7.2.

7 H. 7.11.

48 Ass. 40.

Lic.

108 *Ou chose serra, rule per le greinder part de le state. Disseisee Releise to the disseisor, after he had made an estate for life,*

his right to this free hold is gone also. *A 25 Auct.*  
 Cognisee dischargeth the reversioner, or  
 purchase, the reversion, the particular estate  
 is freed also: Lessee of a Mannour, to which *14 E. 4. 6.*  
 a villain regardant (is) the Lord in rever-  
 sion manumits the villain, it seems this  
 shall binde the Tenants for years, Tenant  
 in dower releases her right to him in re-  
 version upon a lease for life, her right is *8 Report Case*  
 gone even during the *life of the Tenant* *Althams 151.*  
 for life. A menaltie is granted for life, the *9 Report Case*  
 remainder in fee to the Tenant, it is extin-  
 guished in all: *9. Report Case, Ascough &*  
*Quiks Case ibid.* Land is given in taile,  
 the remainder to the King, the tenant in  
 taile shall hold of none. *Fallit hac regula*  
*aliquando.* A. is impleaded who hath  
 nothing in the free hold, fee discends, this  
 shall not make the writ good, but if the *1 H. 6. 2.*  
 reversion of the fee discends to the free-  
 hold which he hath purchased, this makes  
 the Writ good. A Parson makes a lease, the  
 Patron who hath the feesimple confirmed,  
 this shall not make this good against him, *Dyer 133.*  
 hath a grant of the Parsonage for yeers, *7 Report Com.*  
 &c. See *2 Report Beckwiths Case, Instit.* *Bedfords case.*  
*1. 298.*

*109 Ouvreserra son judg, demesne, pay-*  
*H 3 master,*

22 H. 8. I.

master, carver, &c. Lessor covenants to repaire the house, if he doe not the lessee may pay himselfe of the rent. Gardian of a Church, at his own cost repairs the Church, and for amends detained ten lodes of stones of the parishioners, for which the successors Gardians bring an action of accompt, and adjudge that hee may lawfully determine them, *aliter* of a servant Baly, &c. who doe disburse money, &c. See the cases of Tailors, Hostlers, &c. who may detain Robe, Horse, &c. till reasonable satisfaction.

110 *On Chose in lieu ferr a de mesme le nature.* Land escheat to the Lord who is

¶ H. 4. placito in of the Signiory by dissent, so shall hee be of the land, and shall have his age, and if the Signiory was in tayle, so shall the land it selfe be, and the Donor of the Signiory shall have a *formdon in revertor* if hee dyes without issue. A fine is acknowledged of a Signiory and tenancy escheate, a *Scire facias* shall be of this land, and he shall not say nient comprise, for it shall be said parcell of the Manner which comes in loco.

111 *Parum differunt que re concordant.* A declaration was to have a Faire three

16 E. 3. 4.

18 E. 3. 11.

three days, and ruled that two dayes and 16 E.2. action  
 two half days will mayntain this declar- of Case 47.  
 ation. An assise was brought against *Ma-*  
*ajor* and *Comminalty*, and found that the  
*Major* and *Bailiffs* did the disseisin, but  
 because no more was of the *Comminalty* 31 Ass. 19.  
 then the *Bailiffs* it was held good. But note  
 wherethere is an apt form in the Register,  
 there a man shall not differ from it. A  
*Precipe quod reddat* is forty and ten acres  
 of land, &c. and the Writ abated, *quia* 14 E.2. F. Bre.  
*non fuit quinquaginta*. The moiety of twen- 816.  
 ty shillings and ten shillings is not all one,  
 See *Institute* 3. 131. simile in point of Institut. 1. 197.  
 pleading. See 17 E.4 3. *Testamentum &*  
*literas testamentarias* all one.

112 *Parols on violent amount al act & contra.* A condition of a bond was to permit I. S. to remove his goods, and denial by word to remove them is no breach of this condition, without averring of bolting or locking the doore against him, 8 Report case &c But note where its said generally that *Frances.*  
 such a one *impedivit*, interrupt or disturbe, &c. it is good without more as it seems and shall be intended actuall disturbance, yet see 47 E.3. 24. *Contra* that

3 Report 78.

22 H.6.17.

45 E.3.3.

26 Aff.17.

Dyer 240.

3 Report 23.

Pasc. 4. Car.  
Lady Smiths  
Case.4 Report Case  
Benn.

39 H.6.9.

he ought to shew some cause or act done in his pleading. A Commoner said to the Lord of the soyle that the soyle was his and commanded him to cut no trees, this will not amount to a disseisin.

113 *Parols subsequent bounded or qualified by the precedent, &c e converso.* A terror covenants that for any act by him done, the assignee shall enjoy against every man, this is no *absolute Covenant* that he shall enjoy. A bond to make sufficient estate as *A* shall devise, these last words take off the vigour of the former for the condition is well performed though the estate he makes be insufficient, if *A* devise this. A Covenant is to surrender upon request, and to permit *A* to take the profits, the *word request* doth not goe to the latter clause, and he may take them without request. Actuall seisin and possession spoken of the word actuall goes to the first only. *Scilicet Seisin, vide 49 E.3.16.4 Report Case Palmer.*

114 *Parols sunt plea.* The condition of a bond is if the Obligor do not pay, that then the bond shall be void, so it is that the Obligee shall pay, &c. both are good.

good and shall stand, and it is his folly, &c.

And not like the case where the *solvendum* <sup>4 E.4.29.</sup>

was to the *Obligor*, for this may be omitted

and is void, *Ego* it shall not hurt. A

Bond was made T.T. Sheriffe of W. in

*Com. perdicit. pro prædict.* & ruled nought

for the senslessesse of the word *perdicit*. but

for *parolls font* plea, *Vide placit hic* 151.

Trin.21. Iac.

Cale Norw. in

B.Roy.

115 *Pœna aptabitur damno.* If a

stranger commit waste in my land by

which I lose treble damages, in trespass

against him damages shall be recovered

treble. Offence against a statute shall be

punished as that says, and so at the com-

mon Law as that directs.

44 E.3.27.

116 *Pœna sine culpa.* Assise is against

husband and wife, and shee sole did the

wrong, and there is no other forme, Yet

the plaintiff shall be amerced as to the

husband for naming him that did nothing

and yet he cannot help it.

9 Report Cale  
Husse.

117 *Pœna delictum superabit.* A man

lets houses in decay at the time of letting

and they are burnt by his negligence, hee

is bound to make them new. A. had re-

covered forty shillings if the Sheriffe had

made his returne by a legall officer, in an

action upon the case for this, he shall reco-

40 E.3.6.

38 Ass.13.

ver against the Sheriff twenty Marks.

118 *Particeps criminis & non pœna.*

6 Report Case  
Buereton.

Tenant by entire service ceaseth, the Lord recovers in this part the cessor was, by this he shall lose his entire Signiory, and the tenant shall have benefit by it. Husband seised of land in right of his wife sows the land, and after he himselfe sues a divorce, *Causa precontractus*, yet he shall have the Crop.

14 H.6.26.

5 Report 49.

119 *Pœna tollitur cum culpa, vel sequitur culpam.* The King pardons all alienations, the fine due by this is also pardoned, if a contempt is pardoned, the amercement also is.

37 H.6.20. aut  
eo circiter.

37 H.6.28.

120 *Propositio hypothetica taken Categorical.* I say to I. S. if hee will beat mee I will beat him, and this without any provoking words, this is a menace and an assault, and the if is idle. Administration is committed to two, and the one being present says, that he will take the administration upon him (if the other will agree) hee is administrator presently till the other disagree. One says to I. S. if thou go to London, thou art an arrant Thiese, it seems these words are actionable, and shall be taken absolute. The defendant in action

of batterie and menace, &c. justifies thus, he saith that if the tenants of such lands will kill or maime him, hee will himselfe defend, and will rather beat or maime them then they shall him, and this holden a good justification. I will prove him perjured if hee will justifie his answer in Chancery an action lies.

10 E. 4. 6.

3 Car. in b.  
Roy Corbols  
case.

121 *Principio non valens tractu tem-  
poris non convalescit.* A high way is gran-  
ted to mee, to B. acre where I have no free  
hold in it, albeit after this grant I purchase  
B. acre, this shall not make the grant good.  
A suit is begun in *London* for the same  
matter, for which a suit is depending in the  
common place, this is ill begun in *London*,  
now a nonsuit after in that in the com-  
mon place shall not amend that in *Lon-  
don*, or make it of any validity. A Bishop  
makes a Lease for fourre lives, and one of  
the men for whose life, dies in the life of  
the Bishop, this shall not make it a lease  
for three lives within the Statutes, 32 H.8.

21 Aff. 1.

14 H.7.7.

39 H.6.12.

10 Report 6.

21 H.6.46.

4 Report Case

and 1 Eliz. *vide ad idem* 11 Report Case, *Herla:**Auditor Curle, & 4 Report Druries Case.*A man leases land for life, and then grants  
the trees which grow there, this shall not  
be a good grant after the Lessee dies. I sell

Pl. 432.

9 Car. in b. Roy  
Smith's case.4 Report Case  
Rawlins.

9 H. 4. I.

Vide 8 E. 3. 24

E.N.B. 73.

8 Report Case  
Lord Stafford.

Crown

a horse to I. S. upon condition to pay 40. shillings at Michaelmas next, and before this day I sell him to another, the first vendee failes of payment, by which I reseise the horse, this will not make the second sale to be offorce. Debt in the Stanneries is brought against an heire, which is not maintainable there by Law, now though

he pleade a false plea, by which his goods are chargable there, this will not affirme their jurisdiction. *Exception*, this rule fails in things which have *operation by estoppel*, as if I let B. acre by deed indented, in which I have nothing, if I purchase this afterward it is a good Lease. So in case of justice, one makes a return wch is no Sheriff but afterward the Sheriff avowes it was done by his Officer, this is good now. Recaption lies not upon a reprisall of a distress in case a Replevin was sued in a Mannor or Liberty, and not in the Countie, yet if it be removed this writ now is maintainable. The same Law is where the impediment is removed, tenant in taile is theremainder in taile of the grant of the King. Tenant in taile acknowledges a

fine, or suffers a recovery it shall not binde

Crown it will binde. Tenant for life im-  
fess him in remainder, in taile and his  
wife, this is no forfeiture or discontinu-  
ance, because if shee die first it will bee a  
surrender, but if shee survive a forfeiture.  
This rule failes also by long continuance  
of time, as where a man prescribes to have  
a rent by distresse, &c. It is no plea to say 13 E.4.41  
it was always payed by cohesion of di-  
stresse, albeit it was begun by wrong,  
&c.

41 Aff. 2.

122 *Principio valens tractu temporis  
non devalescit.* A man says to me see you  
I. S. I will kill him. I may him hold, and I  
shall be excused of this imprisonment,  
though hee repent him, one makes a lease  
which is good, now by alteration, &c. it  
shall never come to be forgery.

9 E.4.26.

123 *Principio dato sequitur concor-  
tans, & sit sublato.* I have a Mannor in  
which is a Park and Fish-pond, I lease  
this excepting the game, &c. And after I  
grant the Reversion, the Deere and Fish  
shall passe as attendants. If a statute now  
made gives an action in case none lay be-  
fore, the same Processe, Judgement, and  
Execution shall be, as in the same action  
was in other Cases, where it lay before at  
the

11 Repore  
Lifords Case.

10 H.7.10.

Report 21.

18 E. 4. 21.

45 Aff. 9.

Michel. 40. &  
41 Eliz.

the Common Law, albeit this statute doe not say any such thing. He which takes upon him to grant a Rent, it shal be by deed, and hee shall tender a Deed for that purpose without any agreement for it. A bond is to a Sheriffe to discharge him of the returne of an Exigent, he shall discharge him of all Concomitants and therefore though he return him *languidus in prona*, which discharges him. If after distresse *ad habendum corpus*, goe forth to the new Sheriffe, and the old Sheriffe is distreined to the value of twenty pence, which is forfeit, now the Obligor hath failed of his promise. Cause of appeal is pardoned, and after an Exigent goes out, now the goods shall be saved which otherwise by award of the Exigent were forfeited, because the principall was pardoned.

124 *Presumptioni stabitur donec probetur in contrarium.* Unity at the time of the dissolution discharges tythes upon the statute, but this is upō presumption of prescription, &c. Now if it appeare upon evidence, that part of the Mānor was in leas & paid tythes, this disproves the presumption, yet the residue of the Mānor shal be discharged of tithes. A man purchaseth land of I.S. who

who is impleaded in a *precipe quod reddat*, <sup>so Ass. 3.</sup> the law presumes him to be a Champertor without shewing hee was so till he may prove it otherwise.

125 *Qui tacet consentire videtur.* He <sup>27</sup> Ass. 3. which is present at the actuall killing of a man, and puts not debate shall be adjudged assenting. A Writ is against four, two wage their Laws of non summons, the o- <sup>8 H. 6. 36.</sup> ther two say nothing, it is so strong an implication of jointenancie that they cannot deny it afterward, The Ordinary makes an appropriation to the Patron, it shall be <sup>Plo. case.</sup> said made by his assent, *vide Dyer 62.* <sup>Grendon.</sup>

126 *Quis sentit commodum sentire debet & onus.* He which hath any benefit of a river shall be charged with the scowring of it, upon this reason it is that the assignee is chargeable in covenant to repair, though he is not named. A man grants a rent which is behinde, after he grants the land to another, the grantee dies, he which took the profits when the rent became arreare shall pay it, See <sup>37 Ass. 10.</sup> <sup>E. Bar. 305.</sup> <sup>5 Report Case</sup> <sup>Dean. of W.</sup> <sup>11 H. 4. ultimo</sup> <sup>4 Report Og-</sup> <sup>nels case.</sup> E. 4. 10, 12, 18. 26 E. 3. 64, 30. I reteine Counsell for one, <sup>30 H. 6. 9.</sup> he shall pay the fee and not I.

127 *Qui sentit onus sentire debet & commodum.* This the reason if a settlement is upon

Report case upon conditio, if the fessor or his heirs pay  
 Shelley 99. ten pounds before Michaelmas that they  
 9 H.7.25. shal re-enter, the father hath issue a daughter  
 and dies, his wife being withchilde of  
 a sonne, the daughter paies the moncy,  
 she shall hold the land. The husband and  
 Plo. case, Ear wife suffer a recoverie of land of the hus-  
 and Snowe. band, and they vouch and have judgement  
 to recover in value, the husband dies, the  
 wife shall have nothing of the intended re-  
 compence in this case, for shee lost no-  
 thing.

128 *Qui per aliud facit per se ipsum  
 facere videtur.* An annuity is granted till  
 33 E.1. anty 51 he is promoted to a benefice by the gran-  
 tor and his heirs in a Writ of annuity, he  
 shews the plantiffe was promoted by his  
 mother at his request and *bene*. In tres-  
 passe against A. and the evidence is that  
 39 H.6.8. B struck me by his incitation and *bene*.  
 5 Report Case *Frost.*  
 39 H.6.42. A Baily arrests mee, he may shew the She-  
 riffe did the arrest. A Recoufe is made  
 Dyer 241. to the servant of an officer, he may return  
 the recoufe made to himselfe. An Abbot  
 prescribes to hold land discharged of pay-  
 ment of tithes *dum propriis manibus, ex-  
 colitur* if it be tilled by his servants, it is  
 20 Eliz. Dyer. 277. within the prescription, outre with my  
 beasts

beasts is my entre, and so he shall declare,  
 Quare clausum fregit, vide 15 E. 4. 24. 21 21 H. 6. 5.  
 E. 4. 16. 44 E. 3. 44. 12 H. 7. Kellow,  
 Placito 7. But note this exception where 42 E. 3. 23.  
 it is matter of authority, it is otherwise,  
 he must doe it himselfe.

139 *Qui remedio destitutus reipsa valet, si culpa absit.* Upon this reason it is <sup>6 Report 63;</sup> that he who hath a reversion by way of use, which is executed by 27 H. 8. shall avow, have wast, &c. without attornement. Upon the same reason tenancie by curtesie, shall be of a rent before seisin, To <sup>3 H. 7.</sup> make the obligor executor, is a release in <sup>8 E. 4. 3.</sup> law because he cannot release to himselfe, <sup>44 E. 3. 18.</sup> vide 7 H. 7. 11. *fallit regula.* A parson pays an annuity, and takes an acquittance, the successor shall not have this, & yet his plea of payment is not good without it.

140 *Qui magis Scit & potest de eo magis requiritur.* If a stranger is to plead that such a one hath to name John Abbot <sup>1 E. 4. 7.</sup> of Ramsey, it is sufficient, but if the Abbot himselfe was to plead such a plea, he shall shew how his name is so, &c. See 13 H. 7. 19.

141 *Quicquid solo superstruuntur solo cedes.* And therefore if one build upon

my land, or plant trees they are mine. Except  
 22 Aff. 93. if my water by long continuance  
 of time by little and little imperceptibly  
 wear, and so run upon your ground, yet it  
 is mine and not his upon whose ground  
 it runs.

14 H. 6. 11. 132 *Quicquid remittitur fieri aequali  
 facto.* A deed is delivered into equall  
 hands, to be delivered to I. S. upon cer-  
 tain conditions, the conditions are broken,  
 but he that was party to the delivery doth  
 release the conditions, now it's all one as  
 if they had been performed,

F.N.B. 30. 14 H. 7. 4. 133 *Quae non prosumt singula iuncta  
 iuvant.* Tenant for life in remainder shall  
 not punish wast, nor have a Writ of right,  
 but if he joyne with him hath the fee, he  
 shall have both. Lessee for years grants  
 part of his terme, and both joyne in a sur-  
 render, this is a good surrender, which se-  
 verally was not good.

7 Eliz. Dyer  
 234. 134 *Quod necessario intelligitur non  
 deest.* A fine with proclamation is plea-  
 ded, and he shews that *termino pasche*, 30  
*H. 8.* So many proclamations were and  
*termino. Trin. 4.* proclaim: and Michael-  
 mas term 30 *H. 8.* other soure, and excep-  
 tion was taken that no terme was added

to trinity, but ruled sufficient because it is added to Easter and Michaelmas & necessario sub intelligitur to the other

135 *Quod non capit discus capit fiscus.*

The appellee in robbery disclaims in the 13 E.4.5. goods, and after is acquitted, the King shall have them, money is to be paid to I. S.

who dies without heirs or extor, and se- 48 E.3.31. questration was, &c. It is said the King The Earle of shall have this money. Marches casey

136 *Ratio dicti minus valet quam distin-  
tione ubi differunt.* A Bishop certifies ba-  
stardie, and indorses the reason of it, be-  
cause the husband was beyond the Seas 38 A.1.14  
seven years, the certificate is good of the  
bastardie, and the reason of it reje-  
cted.

137 *Relations.* It is a fiction in Law used to severall necessary purposes, som-  
time to make a nullity of a thing *ab initio*,  
which had an *esse* to certain purposes, and  
for other necessary uses in the Law.

138 *Relatio & non ad ultimum.* A  
Writ is brought of rescuing his goods,  
and denying to pay toll, *contra pacem, &c.*  
This shall refer to the Rescouse and not to  
the toll. Note where the thing is vain to

30 E.3.15.

30 H.6.

32 H.6.17.

6 E.3.42.

6 E.3.12.

Sir Adam de  
Clidcrows case.

17 E.3.26.77.

1 aff.15.

2 H.6.23.

Plo Crofts  
case.

4 H.6.3.

Dyci 45.

which the relation should be, as place &c.  
there reference shall not be ad ultimum  
in that kinde, where the place was not put  
pro loco, but for another purpose. A carve of  
land is in demand, meadow, wood, and rent  
& an exception comes after all, for stries to  
Acres, this exception goes to the Land. A  
demand is by Writ quod reddit manerium  
de W. & two acres of land, cum pertinentiis  
in Clidcrows. If is cum pertinentiis shall be  
referred to the Manner, though it is in anoth-  
er Town then Clidcrows the same Law  
is where severall Lands in severall Towns  
are in demand precipi, &c. & intermix. mes-  
suagia illa to, rau prata rediuis, &c. illa refe-  
re to all, A bond is made to A, B, and C  
Yeomen, this goes to all three desirous  
M. quafuit exor T.S. de Marten Davie  
this addition of place refers to M. A  
declaration was of a thing dene at Ma-  
juxta a Ston in Com. Northampton, and af-  
ter the defendant at Ston, in Com. presidet.  
assime &c. Warwick was in the Mar-  
gent, and Ven. fac. went to the Sheriff of  
War: and tried there, and judgement was  
stayed for that Northampton was the last  
Town and County named, and the rule

given

given that reference for the most part is M. 35 Eliz. to be *ad proximum antecedens*, though it is Case child and absurd, or will overthrow a verdict, &c. *Towers*. See *Plo. Adams case* 6. exception. 9 Rep. 27 5 E. 4. 1. 6. *F.N.B.* 2 D. 18 H. 8. 1. 6. *Rep. Sir H. Finches case.*

139 *Relation will rectifie incertainties in place, time, measure &c.* A condition of a bond was to discharge him of such a rent against R. & also to pay his arrears incurred before Michaelmas next both shall be before Michael, by relation to this subsequent word Michaelmas. A Lease is of W. acre & rent to be paid at D. upon the feast of St. Michael, and if it is behinde by 40 daies to reenter, though no place is appointed where it shall be paid at the 40 dayes end, it shall be referred to D. Condition of a bond is to make a lease before Michaelmas to the Obligee for 31 years, if A will assent, and if not, then for 21 years, A will not assent the lease for 21 years ought to be made before Michaelmas. Assise of the mortie of a house, a carve of Land, and 40 shillings rent, and ruled onely a moiety of all is in demand. A man grants ten acres of his land in D. *simul cum commun-*

¶ A. 3.

nia posture in omnibus terris suis; This shall be in D. onely, and not charge his lands elsewhere.

¶ H. 7. 16.

140 Relation shall make things have been, as if they never had been. The husband disagrees to a ffeftment made by his wife, it is void *ab initio* so that he may plead *ne infeffa pas*. A devise is that executors may sell land &c. when they tell all mean charges made by the heire in the interim shall be avoided by relation to the time of the death of the testator. I disseise A. to the use of B. the disseisee releas to me, and then B. agrees, this agreement by relation shall be as if he had agreed before the release, and so shall defeat it. Jurors alien their Land away between the teste of the writ of attaint and judgement, yet they shall be charged to the King for the estrempment by relation. Cause of assise brought was for rescuing a dittresie taken for rent, and then an office is found which intitles the King, who leases the Land, and then an *ouster le main* is sued, the assise is gone for ever, because the King shall bee laid in possession at the time of the rescous by relation of this office, upon whose possession

¶ H. 7.

¶ H. 8. 10.

¶ H. 8. 18.

¶ E. 3. 26.

¶ A. 3.

session no distresse could be made. See *Pl. 281. 10 H.7.18.*

141 Relation to defeat a thing, shall be intent *a ad unum* Husband and wife tenants in tail, shee brings dower after his death, this unsetleth the estate was joyned in them two, but shall not have relation to defeat a Reversion granted by the rever- sioner. Atournament makes the services *48 E.3.16.* past *ab initio*, yet nothing of the arrears *11 H.7.8.* shall be paid in prejudice of the tenants which are third persons. The Lord is intitled to the marriage of an heire of the disseisee, the heire release to the disseisor, hee is in now from the time of the first disseisen of a good estate, but this shall not *7 H.6.12.* hurt the Lord of his Wardship, &c. An infant is infeoffed and disagree, this de- feats it *ab initio*, as to himselfe to avoid all dammages, but not to make a void gift by his feffor good: a remainder is limited to the King, and before intolment of the deed he grants this over, and then the deed is introlled, this will not make the grant good.

142 Relation will yeeld to necessity. The husband is essoyned, and at the day

2 E.4.17.  
21 A.1.17.

fails to bring in his warrant, or doth not appear, the judgement shall relate to the time of the protection, or esjogn cast, &c. yet his wife may bee received for no time covenable was before to pray to be received untill default, &c.

4 H.7.11.

143 Relation shall not be to take away things collaterall, &c. Trespass is made to A. and after his estate is defeated by condition performed or Act of Parliament, this shall not relate to take away his

3 Report Case action vested, &c. A bond is delivered to Butler and B. my use, I disagree this shall now loose his

ker.

22 H.8.5.

144 Relatio ad principium, &c. Lessee for yeers is bound to I. S. to make to him the best estate he can, and afterward the reversion, or releases to him, the lessee shall be discharged of the bond if hee grant the estate he had at the bond making. Stranger abates, after the death of the father, the son dyes his wife shall not have dower for this abatement shall relate to the death of the father. Administratour de son tort takes letters of administration, this shall relate to the death of the

21 E.4.60.

9 E.4.33.  
18 H.6.22.

In-

Intestate. An Escrow is delivered by a feme sole, if she marry or dye yet by relation it shall be good. An Act of Parliament hath relation to the first day of the Session. Presentment *tempore belli* is not good to gain possession, though induction was *in tempore pacis*, a blow given in time of *in sane memory*, though he dye when of sane memory it is not capitall. Sale of goods is out of the market, and after they are brought into the market and delivered there, yet it relates to the first sale, &c. and so takes away no property of an Estranger.

145 Relation to time, place, &c. In case of attendor by verdict in felony, It shall relate to the time of the fact done, of outlawry it is otherwise, but in case of treason outlawry shall relate to the fact done.

Attendor by Act of Parliament shall relate to the first day of the Parlia. one shall not be accessory to a felony by relation, but onely from the death not blow given.

Arbitrement was pleaded at D. scilicet that such an one shal grant an Annuity out of the Mannour of S. & in conclusion says, *quod loco supradicto, &c.* this shall relate

14 E. 4. 2.

21 H. 6.

3 Report case,  
Lennings and B.

33 H. 6. 17.

1 Report 199.

1 Mar. Dyer,

99.

30 H. 6. 5.

33 H. 8. 2.

Cromp. 77.

Dyer 59.

32 H.6.17.

to D. and the *Venire facias* shal be thence a *Venire facias* was *ad recognoscendū*, if an Executor did administer *aliqua bona* that were the Testators after his death, these words after his death, shall relate to administer and not to goods, to examine whether they came after the death or not.

2 H.4.39.

Hill.19. Eliz..  
Sowers case.

148 *Relatio sit ad accommodatoria.* A man leases for the life of I. S. & after gives all his lands & reversion of this parcell *habendum* all his lands and parcell *cum acciderit proxime post mortem* I. S. these last words shall relate to the reversion onely.

Report Case  
Hickman.

Report 32.

The Oblige doth acknowledge he is satisfied, all bonds, and promiseth to deliver in all bonds (except one of ten pound, this exception goes to the word *satisfied*, and restrains this and not onely to the words deliver in, see the word (*such*) is to equalls in the mischiefe and not to any before in the statute there named. See 32 E.3.4. Condition of a bond was, if the Defendant enter peaceably, so that the Plaintiff may bring his action before Michaelmasse, in this case, these words before Michaelmasse shal relate to the en-

37 H.6.18.

tre

cre onely, and not to the bringing of the action.

149 Relation to avoid thing or a vaine thing will destroy that was good in the premises. As a grant is by me of my lands in D. which I had by descent, or of the gift of I. S. if this be falle it will destroy my grant, A bond to performe all Covenants between A. B. and C, in such an Indenture, and there is not any such, the bond is not good, one makes an acquittance of debt, which was recovered by a judgment, &c. and there is no such it is void, husband and wife are seised of land, and a grant is made of the reversion of the land which the husband holds, this is void to passe this reversion. *Contra sepius.* A bond is of thirty pound and the Obligee upon 33 H.8. Dyer<sup>3</sup> receipt of twenty pound &c. makes an acquittance thus, received in part of twenty eight pound, &c. the summe of twenty pound, this shall not make frustrate the acquittance if not that averment is that twenty eight pound was for another contract. A reversion of lands in D. que omnia sunt, in lease to I. S. for life is granted, though no such lease is, it is good. See 48 E.3.18<sup>3</sup>

Pl. 9.

Plo. Case  
Throgmorton.

17 E.3.35.

Sir John Hard-  
shals Case.

33 Ass. placito  
ulmo.

§ H. 7.39.40.

46 E. 3. 17.

20 E. 4. 11.

Plow. *A lams case.* 5. exception, 10 Rep. Leges case, an indēture of defensas refers to a Statute made primo Maii &c. and it was another day, yet it is good because an agreement was in the summe of the Statute, and name of the parties. See 20 Ass. 8. 26 Ass. 38. 31 Ass. 1.

148 *Semel in alius semper presumitur malus & contra.* A Jury was challenged *cum panello*, for being made favourably by an Officer of the Sheriffes, and upon a new *Ven. fac.* part of the same jurors are returned by the Sheriff himselfe, and ruled *bene*, and the suspition shall not be said to continue.

149 *Similitudo non currit quatuor pedibus* Resommons is it a quod sit (in eodem statu.) Yet a default saved, which was before discontinuance, so esjoigne lies which did not before.

150 *Sic utere tuo, ut non la la alieno.* Lessee for years shall to take his hedge-bote, that he doe not destroy common of estouers which another man hath there, he which hath common in Land not inclosed, shall keep his cattle out of an estrangers land. If beasts are driven by the high-way

way, he ought at his perill keep them out  
of the Lands adjacent to the way, &c. ex- 20 E. 4. 21.  
cept in case where the owner is bound to 10 E. 4. 7.  
inclose &c. but note, prejudice may in-  
sue by my act upon my own land without  
danger, as where a man erects a wall,  
part upon my land, and I destroy this upon Pasch. 34.  
my land, and the rest by that means falls Eliz. C. vii.  
down, this is excusable. fordvers. Gibb.

151 *Singulare distributive sumptu  
equat plurali.* Tenant in assise makes se-  
verall bars, & the plaintiff makes severall  
titles, and the tenant pleads *reigne lessise* Dyer 328.  
*supratitulo*, this goes to all the titles. A  
lease is *pro uno anno*, and if they agree  
that he shall have the land for three years  
*reddendo durante termino predicti.* ten  
pounds annuatim this reservation goes to 10 Report  
both termes. In debt the plaintiff de- Case. Loefield.  
clares that the defendant and his bro- Mich. 23 Eliz.  
ther were bound in an obligation *sigillo Case Briton &*  
*suo sigillar*, this extends *distributive* to *Bolton*.  
both.

152 *Synonyma* will not serve in our  
Law. The Statute W. 2. forbids entre,  
*abi ingressus non datur per legem*, now 9 H. 6. 19.  
if in an indictment, &c. it is layed, *quod*

3 Report Case *ingressus est illicite*, this is not good, so an  
Long. indictment for murther by thes words,  
*ex malitia preconitata necavit*, &c. is  
not good without the word *murdraivi*.

153 Surplusage, what power and in-  
fluence this shall have in Grants &c. And  
note some use may be made of it as where  
a contract is to deliver a horse &c. and a  
bond is to deliver it, now albeit by the  
contract the property be vested in the ob-  
lige, yet in this case if the horse is tendered  
to him, and he refuse, he hath lost the pro-  
pertie, because this bond which was  
more then needed hath determined the  
contract, *not a.*

152 *Totum continet suas partes & e*  
*converso.* The Statute W. 2, which gives  
30 E.3.13. a writ *ad petendum advocationem decima-*  
7 Report Case *rum*: implies he shall have this writ for  
Bulwar. a fourth part of Tithes. A statute is made  
2 Eliz. Dyer that the adjournment of Michaelmas  
186. Terme shall not hinder fines &c. This im-  
plies that though part of the Terme onely  
Institut. 1. 154. is adjourned, that shall not let, but fines  
are well levied. A Statute is if a man is  
redisseyed of land, hee hath recovered be-  
fore such a penaltie shall bee, if he is redis-  
seyed

seised but of part of that Land, it is within that statute. A man hath a way for foot, horses and waynes, if this is made so strait that wayns cannot passe, which is onely part of that he hath way for, yet the writ shall be, *quod obstruxit viam generali*.

155 *Totius & partis eadem ratio.* Aid was granted for part of the Land charged with rent, it shall stand for all. He which diverts part of a water shall be laid in law to divert it all. *fallit regula aliquoties.* A liberate comes to an Officer to pay a hundred pounds, if he have it all, he ought to pay it, but if he want part thereof, hee is not bound to pay that part. &c.

156 *Totum qui concedit partes negare non posse.* It is alledged in Assise that all the lands within the fee of Saint Peter of Yorke were departible between the males, and that the ten acres in question were within that fee, and the tenant would have said that these ten acres were not departible, but was not suffered. This doth *Exception* not hold where the matter affirmed of parcel tends onely to alter the jurisdiction. As where a Manner is alledged to beancient

3 Exception:

ent Demesne, hee may say that Black acre  
parcell of the Mannor is Frankfee. *Fallit  
regula*, also in case of time that which  
may be said of a moneth of time, cannot of  
a week, &c. As the Statute § Eliz. gives  
a penalty against him trades by the space  
of a moneth, not being an apprentice, &c.  
if he trade but a weeke or fortnight hee  
shall forfeit nothing at all within this  
Law.

157 *Tert, of his own wrong, a man  
shall not take advantage.* I.S. takes from  
42 E.3.18. *§ Report Case* in the release he had made, now I shall  
wimarke.

*4 Report Case* *years cut trees, he shall not have avail of  
Harlakenden.* this to keepe it toward reparations, &c.

*10 E.3.40.* Husband and wife are impleaded, and the  
demandant holds the wife of the tenant  
that shee cannot appear, this shall not turn  
to a default in the tenant. See *4 Report*

*3 Exception.* *Sir Andrew Corbet, & 34 H 6.11.*

*Regula, fallit;* in case hee to whom the  
wrong is done had it in his power to re-  
medy it, there it shall prejudice him if he  
doe not remedy it, and it shall be to the  
availe of the wrong dore, as I am bound  
to inseeffe I. S. before Michaelmas of B.  
acre

acre, and the obligee, disseisneree of that acre, here because I may enter and regain the Land and make the feff, if I doe not I have forfeited my bond: So wheret Covenant is to build a house by the lessee before the end of the Terme, and lessor enter upon him and outs him, yet hee is bound to doe it, or else the Covenant lies, unlesse there be speciall matter to excuse it, as if the other hold him out by force.

8 Report 92.  
Frances Case.

158 *Utile per inutile non vitiatur, nec emendatur.* Of this nature is all Surplusage in grants, deeds, &c. It doth neither good nor ill. A. release to B. *ad primum diem Maii quod esset.* All Covenants, &c. this is a present release, and the subsequent words *ad primum diem Maii quod esset* are idle. A deed is that such a thing shall be done before Whit-Sunday next, being the first day of June, though Whit-Sunday is the fourth of June, this shall not frustrate the agreement, but shall be made on Whit-Sunday. Uses are declared in an indenture in taile, in which is

4 Report 93.

35 H.8. Dyer  
57.

Pasch. i. Car.  
Case Bishop  
of Norwich.

Vid. 41. A. 1. 21

power of revocation, and upon recitall of this deed he declares that *prædicti usus*, to him and his heirs shall be void, yet this

8 Report Case  
Frances.

Institutes 1.

146.147.

Vid. 30 H. 6. 14

14 E. 4. 2.

2 Report Case  
Buckler.4 Report Case  
Palmer.

30 H. 7. 19.

a good revocation, and the other words idle, *scil.* to him and his heirs. A rent is granted for legality of partition, this is good without deed, now annuity doth not lie though a deed is in this case made because surplus, &c. *Exception*, Sometimes idle and vain words will have operation, as A. release to B. *omni modis* (which the said B. hath against A.) this was adjudged a void release. Lessee for life makes a lease for three years, & then grants *tene-menta predicta habendum* after Michaelmasse, all this is void. The Sheriff in executing a *Fiere facias* takes upon him upon the sale of a Terme, to nominate the beginning of the terme, and saies it was *1 Maii*, where it was another day: this surplus makes the whole execution null. An union was pleaded to be *concurrentibus his quæ ure debent*, &c. and by assent of the Ordinary, this surplusage expressly contradicts that was implied in the *concurrentibus his*, &c. in which the Ordinary might well have been intended also which now appears that he is not, and so vitiates all the rest, &c. for surplusage in cases of pleading, the Law varies upon se-  
verall

yet all distinctions, in one case it shall hurt and not in another, where surplusage makes a contradiction there it will doe <sup>22</sup> A. S. hurt; so in case of a Writ where there is not substance to maintain the action, but <sup>39 H. 6. 38.</sup> for to increase damages, it shall doe no harme. *Pl. 85. 46 E. 2. 3. 1 E. 4. 7. Regi- 37 H. 8. 3.*  
*ster 6. 6. 12 H. 7. Kell. 10 H. 6. 10. 8 Re- 21. 11. 11.*  
*port 159 Dyer 235, 236. 50 E. 3. 6 34 H. 6. 48.*

*159 Void, in a Statute where it is said what sense it hath, &c. Observe first where a Statute saies such a thing shall be void, yet the ordinary circumstances are to be observed, which by law are required, to avoid such a thing as ente, and the like. The Cannon saith that a second shall Benefice void, see if before sentence, vide 28 H. 8. Dyer 28. 3 Report 59. Pl. 107. Institutes 1. Statut. 21. H. 8. by that it is void presently and lapse shall incurre, and procheine avoidance is not graintable by a Patron because it's void. If it be enacted that a bond made by I.S. shall be void, as upon the Statute of 23 H. 6. of Sherifffes, such a clause is for a bond taken by a Sheriffe otherwise then is therre directed, yet 5 Report 115 he shall not plead *non est factum*, but*

Plo. 169. the speciall matter and demand. judgement, See action Stat. W. 2. Case 1. which sayes, *quod finis sit nullus*, yet it is not absolutely void but avoidable by error, and not otherwise, the Stat. of 3 Eliz. is that grants of Deanes, &c. shall be void, yet is not so in all respects, for it's good against him that made it, but void as to the successor.

3 F. 4.7.3. 160 *Void, where a thing shall be for part, or for a certain time only.* A man contracts for wages beyond that the Statute allows, this is void as to the wages, but shall charge him in an action upon the Statute. A man enters into Religion, and his wife alienes the Land, of which they were seised, and then he is darreined, he shall avoid this for his life, but the alliance shall hold it against the wife, so a 7 Report Com. terme may be avoided by tenant in dower Bedfords Case. & revived afterward, and it shall be good against the heire.

21 H. 6.29. 161 *Void act as to that was intended, may yet be good and effectuall to a collateral purpose.* An appeale is void being brought by the youngest son, yet this shall him excuse to be indicted, if the party is

acquitted upon this, but otherwise it is in  
 case a woman brings an appeal of the death  
 of another, then her husband because it  
 is apparently ill within the record it selfe.  
 A release of a feme covert is pleaded, this  
 is void to make a barr, yet it will amount 18 H.6.29.  
 to a waiver of a good plea pleaded before  
 to the writ. An issue joynd in waste was  
 a *jeofale*, the same plea notwithstanding  
 may bee a confession of the wast. Re-10 Eliz. Dyer  
 tourne is by one Coronor of a Rescous 272.  
 upon a writ made to more Coronors, it is  
 a voidereturne, yet it will be a good sug-39 H.6.41.  
 gestion upon which a processe shall issue  
 for the Rescous : But *nota*, such a void act  
 shall never bee good or avaleable in the  
 same kinde it was void. Tenant in taile  
 is, the remainder to himselfe in fee, he Pasch. 11.  
 makes a feofment by deed, and a letter of car. Case.  
 Atourney, &c. if this livery is not execu- Baker and  
 ted the remainder shall not passe by the Hagget.  
 deed : Bargain and saile is of a mannor, 11 Report 48.  
 and all the trees the deed is not introlled,  
 this shall not work as a grant of the trees  
 being of no effect for the Land. A man  
 leases a mannor, and hath nothing in 16 H.7.3.  
 demesne at the time, but in services these

4 Eliz. Dyer  
215

1 H. 6. 4. 7.

18 E. 4. 8.

19 E. 4. 2.

Report Case  
Gooche.

22 Aft. 49.

shall not passe, but this exception hath its exception, as where the thing is void, quod modum only as a fine, upon 4 H. 7. is not good for lack of proclamations, yet it's a good fine at the Common Law. A Statute is acknowledged which is not good, for some failers, &c. yet it is a good bond.

162 *Volenti non fit injuria.* A man shoots giving warning to all, &c. and one will go to the mark and is hurt he is without remedy. I am bound to make a house if you prohibit me to come upon the land I may plead this in bar, exception is where the fault and injury is essential to the thing and vitiates it, and is not personall, the law is otherwise, as where I will exchange with one hath a bad title and its knowne to me. So if I know of fraudulent conveyance and you buy the land, in both these cases the party shall have the remedy though hee was willing to the wrong, &c.

163 *Verba discretiva,* shall not extend to joyn't words & contra. The Amercements of my tenants are granted, this shall not extend to those hold of mee and of others where its spoken of an act to be made by

A. it shall be by him sole and not joynly Perkins. 158.  
 with others, but a surrendre of all his lea- & 310.  
 ses, is good of those hee holds joynly as  
 of others. Statute 8. H.6. is if one enter  
 with force or peaceably and hold with Plo. 8.6.  
 force an action lyes, yet if both are done 3 E.4.19.  
 the action lyes.

164 *Verba conjuncta non capiantur  
 discretive & contra.* A Recordare is to  
 remove a plea betweene *A* and *B*. Plain- 3 H.7.14.  
 tiffs, and *C*. and *D*. Defendants, and every  
 Plaintiffe would have counted severally  
 and not permitted, for it shall be intended  
 joyn特 plaint onely. A Statute speaks of an 29 E.3.20.  
 act to be done by two parties, this shall be  
 intended joyn特 act. 5 E.3.14,15. *Contra*  
 wherethey shall be taken discretive, three 2 R.3.18.  
 men then submit of all matters betweene  
 them and *A*. this extends to matters se-  
 verall among them, as well as joyn特. Seve-  
 rall Demises and Rents are in one Inden-  
 ture, and in conclusion hee covenants to  
 pay *reditum prædictum*, this goes to all  
 the Rents. Two joyn in a grant of *omnia  
 bona sua*, so a release to *B*. and *C*. all acti-  
 ons, this extends to their severall goods  
 and severall actions to have operation to  
21 H.7.29.  
No. lib. Entry  
 115.  
19 H.6.4.  
22 H.6.8  
the

the most advantage against him made the deed or grant. Three severall men covenant separation by Indenture and in this, one is bound to performe the covenants made between *A.B. & C. &c.* he shall be bound to performe any covenant made betwixt them separation. Severall rents are behind by a Prior and his Predecessour, and in his Count he concludes, *non dum rediderunt*, And this holden good though part was due in the time of the Predecessor, and part since.

165 *Una birundo non facit ver.* A Lord hath allowance one time to have *Conusans of plea, ubi ipse pars fuit*, this will not serve at another time to hold such plea.

166 *Universale non comprehendit omne particulare.* A man is reteined to serve in all occupations. In debt for wages the defendant may wage his law, which yet hee cannot do in *case of husbandry*, *Ergo. In decies tantum*, it is no plea for the defendants to say that they tooke not any mony for saying their verdict, but they shall say, *nec aliquis eorum, &c.* See 3 Report, *Malquesie of Winchesters Case*, where all rights in a Statute did not extend

11 H. 7. 6.

17 E. 3. 2.

8 E. 3. 2.

38 H. 6. 13.

21 H. 6. 20.

to right of action. So where an exigent <sup>4 H.7.8.</sup> is returned against three, *quod non compa-* <sup>6 Report 56.</sup> *ruerunt* it must be *nec aliquis eorum comp-*  
*peruit, &c.* else its not good.

166 *Ubi duo iura in una concurrunt*  
*persona & que est ac in diversis.* *Articuli Institut.* <sup>1.194.</sup>  
*super chartas ordaneth.* That in case of <sup>195.</sup> *death of one within the Verge, the Coro-*  
*ner of the County, and of the household of*  
*the King shall joyne in the Inquire, and*  
*holden if one is Coroner of both he shall*  
*wellexecute this authority.*

167 *Vigilantibus & non dormientibus*  
*subveniunt leges.* This the reason of lapsed  
incurring for lack of presentment. War-  
ranty barring for lack of entry, discents  
barr entryes for lack of clayme, title to te-  
nancy by curtesie is lost for lack of entry.  
statutes of limitations barr actions, the first <sup>Litt. 552.</sup>  
Grantee that its attornement shall have  
the Reversion or Signiory, &c. and a hun-  
dred Cases more are ruled upon this  
ground. A man is outlawed and error is in <sup>36 H.6.12.</sup>  
the Record this may be reversed, the same  
terme by plea, but after not. A trespass is  
committed to two joyn tenants, and each  
of them releases, and after brings trespass,  
and

160  
13.  
and the defendant pleads the release of one  
of them which is found against him he  
shall not be afterward admitted to plead  
the other release, because he hath surceased  
his time.

*Finis Topicorum legum Angliae.*  
Which was allowed to the Presse  
two yeers since *in furore belli*, but  
the Booksellers were unwilling to  
Print it then because it was in  
French and few in town.



